THE

MADRAS REVENUE REGISTER.

No. 4.] MADRAS:—FRIDAY, APRIL 15, 1870. [Vol. IV.

REVISION OF ASSESSMENT.

We have had before us a voluminous file of very important papers on the subject of revising the assessment of the Salem District, the principles of which, however, are apparently to be made applicable, local peculiarities and other circumstances permitting, to all the other districts of the Presidency. We should have been glad to have published these papers as they were sent to us, but our limited space has compelled us to make a selection limited to the formal Proceedings of Government and Despatches to the Home Secretary, omitting with regret the long and very able minutes of His Excellency the Governor and his honorable colleagues in Council. There used to be a time in this Presidency when the land tax and the mode of levying it was most oppressive and inquisitorial, and when our Revenue officers, following in the wake of the Mahomedan conquerors, rack-rented the ryots and imposed additional burdens on the smallest pretence, which had the effect of throwing the best lands out of cultivation, and thereby crippling the land revenue of the country. The classification of soils ran up to an incredible number, the assessment rising in the same way like the scales of the gamut, until it reached a point at which it was impossible to cultivate with the hope of paying the Government revenue, much less of profit to the husbandman. Then, if a ryot with a few rupees to start with sunk a well, or raised a second crop, down came the revenue inquisitor upon him, to inspect his proceedings and to demand an additional cess which he named *teerwa jasti* or *fysal jasti*, as the case might be. The consequence was that the best lands were thrown up, and all encouragement to private enterprize calculated to improve the land was entirely repressed. Our administrators soon saw the evil of this state of things, and began to minute and to write proceedings; but it takes a long time to uproot old customs and change the *mamool* of the land; so that it was not until the days of Lord Harris that any steps were actually taken to lower the assessments and give the great body of our ryots a real interest in the land. Sanction was obtained from the Honorable the Court of Directors, a Survey and Settlement Department organized to measure and class the lands, and the principle announced that henceforward the land would be taxed at its then capability, leaving all the profits of improvement to the husbandman who effected it. All re-actions run to extremes. Thus the effect of this principle was that the Government demand would be stagnant, whereas the profits of the landholder would be as expansive as rise in prices, over which he had no control, could make it. The

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land was to be permanently *dry* assessed, no matter what the character of the cultivation raised, no matter how rich the crop produced. If the husbandman supplied his own irrigation, then he payed nothing but his dry assessment: if, however, he drew water from a Government source, he paid so much for the use of the water, such charge being calculated to yield a percentage on the outlay expended by the State in constructing and maintaining the work of irrigation. The progress of events has shewn that, however generous this was to the landholder, it was not just to the State on whom the demands for improved administration, education, and other advantages in keeping with the times, have increased to such an extent as to make our former revenues unequal to the strain of present days. The principle of giving every man the full advantage of his own labour and expenditure lowered assessments on all sides, while demands upon the State kept on increasing. Public establishments began to be crippled, reduced, and impaired, while the abominable income tax and taxation on justice were resorted to, to prop up a failing exchequer. As part of the system of reducing expenditure, the Survey and Settlement Department was shorn of its proportions and kept in a state of lethargic overseeing, while the actual work of introducing revised assessments was entrusted to the District Collectors themselves. Another re-action, however, has now taken place, brought about by the discussion of revised assessments for the district of Salem. Our present administrators are not the men who can shut their eyes to the passing events and present wants of the day. They cannot see why revenue should be sacrificed for a sentiment; and, taking right energetic action in the matter, they have proselytized the Home Government to such an extent that, abandoning the principle of permanent assessments on a *"full, fair, and equable"* basis *once for all*, so pretentiously set out in a Despatch of Sir Charles Wood in 1862, they have run further than their advisers, and wish to take every advantage of improvements in land, brought about by whatever cause. But it is time that we should notice the discussion that has so deeply interested us, and which is fraught with so much importance for the land in which our lot in life is cast.

The papers before us open with a deeply interesting report of the Board of Revenue in October 1867 on the Settlement operations in the district of Salem, which, they say, were commenced by Mr. Puckle and Mr. E. C. G. Thomas in August 1859, and were expected to be completed in the course of 1867. The district of Salem comprises nine taluks, and is divided into three naturally well-marked tracts called respectively the *Talaghat*, or southern division; the *Baramahal*, or intermediate tracts; and the *Balaghat*, or most elevated range. The effect of the survey was to shew an excess in Government land alone of 1,50,434 acres of land, or about 14 per cent over the reputed area, exclusive of inam and porumboke. The classified area of the whole district is 15,08,642 acres, consisting chiefly of red soil, and producing the staple grains of paddy, cholum, cumboo, raggy, and horsegram. Messrs. Puckle and Thomas based their calculations on the price lists obtaining in the different fairs and markets for the long period between Fusly 1231 and Fusly 1274, or A. D. 1831 and 1864; and, making deductions from these prices for cost of carrying to market and merchants' profit, they reduced the old commutation rates from about 13 annas and more to 10 annas per Harris cullum in the southern, and 9 annas in the northern divisions, for all grains. They made a further deduction of 10 per

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cent for unprofitable areas, and declared that the result thus arrived at by them represented the Government share as nearly as possible at a moiety of the net produce. The effect of their proposals was a diminution in the land revenue of the district of 4,11,799 rupees, or 24 per cent; but against this was to be set off a gain of 45,450 rupees for second crop irrigation and 8,925 rupees for village service cess at 6¼ per cent, exclusive of road cess. In the opinion of the Revenue Board, these proposals represented a fair and moderate demand, comparing it with its incidence on cultivation and waste and with the rates prevailing in other districts, while it was consistent with the intentions of Government and the Secretary of State. Mr. Puckle was, however, for postponing the proposed settlement—and Mr. Master, the Director of Revenue Settlement, agreed with him—because they thought the existing settlement a good one which the people, with the present prices, were quite able to pay. The Board of Revenue could not think with these officers. In their opinion, postponement would simply be to waste time, money, and labour expended in the settlement operations. Every new settlement involved loss of revenue. In Trichinopoly there was a loss of 25 per cent; and in the Manargoody and Chellumbrum Taluks of South Arcot, there was a loss of 18 per cent. They called to mind the fact that when it was proposed in 1855 to revise the assessment of the whole Presidency, a large sacrifice of revenue was expected; and contended that the determination of the share of the State in the produce of the land was not to be influenced by any consideration of gain or loss of revenue, but by the conviction of its necessity, in order to stimulate extension and improvement of cultivation, to admit of accumulation of capital in the hands of ryots, to create a class of landlords between Government and the actual cultivators, and to give stability to the land revenue and contentment to the people. There is certainly much to be admired in these generous sentiments of the Revenue Board; but considering the wants of the day, these sentiments make for the welfare and comfort of one class of people, while they would leave other classes of the community to the mercy of financial legislators at Calcutta, who pertinaciously shut their eyes to the far different circumstances prevailing in Madras and Bombay, and make these Presidencies pay for the shortcomings of Bengal. Be this as it may; on the views of the Board of Revenue being propounded, there followed a series of minutes from the pen of Lord Napier and his colleagues, for and against revision; those of his lordship and the Hon'ble A. J. Arbuthnot being marked by great ability and thorough mastery of the subject. The general effect of the views of Sir Thomas Pycroft, who was then in Council, and of the Hon'ble H. D. Phillips, was to let well alone. The object of the revision, they held, was to give the ryot a fair share of the produce; if the old assessment did not give them this when it was introduced, times had changed; prices had doubled and trebled owing to depreciation in the currency in consequence of the gold discoveries in Australia, America, and elsewhere, and were not likely to go down. Lord Napier and Mr. Arbuthnot were agreed that the re-assessment of Salem should not be postponed; for not only was it impolitic to abandon the results of so much labour and enquiry, but it was manifest that, notwithstanding the evident prosperity of the district as a whole, there were inequalities that had still to be revised. Both were thoroughly agreed also that it would not be politic, considering the requirements of the day, to abandon more than two lacs of revenue. We are indebted to his lordship

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for an able analysis of Mr. Arbuthnot's views; and if we follow his lordship, we shall at once obtain a clear insight into the respective speculations of these two master minds. Setting out with the starting point that no revenue was to be sacrificed, his lordship was nevertheless of opinion that there should be a new settlement based on the classification proposed by the Settlement officers; the loss contemplated by their plan being recovered by contracting the number of years on which the commutation was to be based, so as to strike off a number of the earlier cheaper years. His lordship thus summarizes Mr. Arbuthnot's suggestions. *First*, to definitively fix the term of years on which the average of prices is to be calculated for commuting the produce rent of Government land into money rent; *secondly*, to fix this same term for all districts, allowances being made for particular localities; *thirdly*, to fix the duration of the new settlement; and *fourthly*, to charge the Settlement Department with the duty of introducing the new settlement. As to the first of the suggestions, and with reference to the Settlement officers having gone back 40 years for their calculations, embracing a period when the country had not realized the benefits of durable peace, and had not enjoyed the advantage of the opening of foreign markets to its productions, Lord Napier would go as far as Mr. Arbuthnot in including a longer retrospect of cheaper years than that advocated by some —say, by taking 20, instead of the last 12 years, which many who knew the Presidency were confident would form a correc basis of commutation; his lordship being guided in his choice by the consideration that Government should be mindful of the rights, the vested interests, the habits, and apprehensions of the cultivators, and the probable development of other sources of revenue. As to the second suggestion, His Excellency would make the term fixed for Salem applicable to all the Presidency, except it could be shewn that the tide of prosperity had set in later, or rose more slowly, in some districts than in others, or that some districts had been exceptionally depressed. No principle was more sacred in the eyes of Government than that the ryot has prescriptive rights in the land, rights of indefeasible occupancy on certain conditions, trenching very nearly on proprietary rights, and composing, with the rights of Government, a sort of common ownership while cultivation is carried on, which it is difficult to define, and is without parallel in the land tenures of England. As to the third suggestion, Lord Napier was against the principle of a permanent money assessment. To use his lordship's language —"the principle of a money assessment in this Presidency is one which requires to be vigilantly resisted, for it is not only advocated by many of the able Bengal Civilians, but it is even supported by some of our own economists, who retain a deep impression of the mischief which was wrought by high assessments in past times, and under other circumstances. In my humble judgment, this Government should set its face stubbornly against such an innovation for the following reasons"—(1). The increase in the value of agricultural produce is an increase to which the cultivator contributes nothing; this increased value is owing to improvements in markets over which the cultivator has no control, or to the discovery and depreciation of precious metals in which he has had no part; so that to give him the whole benefit of the expanding value of his commodity would be simply to reward him for the exertions of others, or for the accidents of the period in which we live. (2). The cultivator does not expect to be put on a permanent unalterable money rent: he will accept the

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assessment when it suits him; he will not, and cannot, accept it to his prejudice: when the harvest is abundant, he will cheerfully pay and wear the face of an English farmer; but in bad seasons, he will be a Hindu ryot and beg for remission: if the ryot can call upon the State to remit, surely the State might participate in a rise in prices. (3). The land revenue will long be the bulk of the public revenue in India: Government is the only capitalist, and the only guarantee, in India; and a development of its financial power, now that the era of wars and conquests has passed away, may really be regarded as identical with a development of the national welfare. Mr. Arbuthnot seems to be in favour of erecting a class of landlords between the Government and the ryot; but this, instead of proving a benefit to the cultivator, might turn out the reverse, by simply raising a race of middlemen between a benevolent Government and a rack-rented ryot; so that the very interposition of an idle class, living on the difference between the rent paid to the State and the rent received from the working man, would of itself defeat the object of Government in granting moderate rates of assessment, and would introduce the evils of the Zemindari system without its agreeable and redeeming features. His lordship was quite in favour of making a settlement with landholders for 21 years, such settlement being open to revision on the termination of that period; but he very gracefully expressed his readiness to accede to a period of 30 years, by way of effecting a compromise with his honorable colleagues. As to the fourth suggestion made by Mr. Arbuthnot, Lord Napier heartily concurred with that gentleman in the propriety of at once placing the Settlement establishment on a proper footing—and for three reasons, viz., to secure celerity and efficiency; to secure an equal and consistent course in all parts; and to save the country from neglect by not taking away Collectors from their proper work. His lordship was also quite in favour of substituting, not only in Salem, but in all the districts, a water cess or light percentage on the wet assessment payable by each holder, in lieu of the ancient customary service to which occupants of irrigated land are liable for the repair of minor irrigation works.

The first of the papers which we publish elsewhere on this subject is the formal record of the views of Government, based on the minutes of his lordship and his colleagues. It is there pointed out, by a calculation worked out by Mr. Hudleston, the Revenue Secretary, that the net result of the proposed new settlement of Salem was capable of being reduced to a loss of 1,14,013 rupees, but that Government could not in the interests of the community afford to sacrifice even that amount out of a revenue avowedly paid with ease. It is further pointed out that the key to the financial result was the commutation rate adopted by the Settlement officers for converting the Government share of the produce into money, which they deduced from the price lists of forty-three years extending from 1821-22 to 1864-65, the earlier years of that period being years of low prices such as were never likely to occur again. On the other hand, taking the average of twenty years from 1844 to 1864, the result would shew no more than a loss of 49,025 rupees out of a revenue of 16,01,628 rupees, or three instead of seven per cent, which reduced loss the Government were willing to sacrifice, as the price of securing for Salem the benefit of the expensive operations which had been carried out. With this view, they called upon the Board to report whether they saw any objection, and whether the same term of years could not be made appli-

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cable to all the districts of the Presidency; and considering the great difference of opinion prevailing in Council as to the duration of the money settlement to be imposed in connection with the revised assessment, they resolved to refer the point specially for the orders of the Secretary of State. On this, we find that the Hon'ble A. J. Arbuthnot minuted again, pointing out that since the recent discussion, he had read the correspondence in the Parliamentary Blue Book for the years 1865, 1866, and 1867, on the subject of a permanent settlement of the land revenue in India, and gathered that the Home Government were clearly in favour of a permanent money assessment: he, therefore, felt that it was proper to point out to the Secretary of State the inapplicability, under a ryotwari system, of a principle which threw the adjoining waste lands into holdings on which revenue is paid, whenever it might be deemed proper to declare the assessment permanent; and he suggested two points on which the specific instructions of that authority should be sought. Mr. Arbuthnot's suggestions were adopted and embodied in the despatch to the Secretary of State, which is the second of the papers we now print. In addressing the Home Government, the Madras Government took a retrospect of the views which obtained, and the discussion that ensued, on the proposals for a general revenue survey and settlement of the Presidency coming under consideration. This retrospect may be thus condensed. The Government of the day thought it undesirable to fix the *grain* assessments in perpetuity, but were in favour of declaring them unalterable for 50 years. They also thought that the commuted money rates should vary with the rateable money value of the standard crop; but not to have too frequent changes, they recommended that prices should be fixed once in seven or ten years on the average of the same period. The Honorable the Court of Directors who then held the reins of power, were, however, in favour of fixing the commutation rates for 30 years as in Bombay and in the North-Western Provinces, and for re-adjusting *both the amount of the grain assessments and the rate of its conversion into money* after that period according to circumstances. This principle was repeated by Lord Stanley in 1858; and here the discussion terminated. It was revived in October 1861, when the Government of India forwarded to this Government Colonel Baird Smith's report on the famine in Bengal, and asked their opinion as to the advantages of a permanent settlement for this Presidency, or of legislative sanction for settlements for terms of years. In reply they were informed that the ryotwari system of Madras was practically a permanent settlement, and that this Government decidedly objected to any extension of the zemindari system which alienated from the State all waste land as a source of future additional revenue, and that they saw no advantage in legislative sanction for settlements for terms of years, which might hamper the Government without improving the condition of the ryot. The subject of a permanent settlement was again brought under discussion by Sir Charles Wood's despatch of July 1862. The Board of Revenue were called upon to report, but that body made no reply; and our Government did not wonder at their hesitation, because there was an ambiguity in the despatch when it was attempted to apply its arguments and its instructions to the state of things which exist here. Supposing the Home Government meant to limit absolutely the maximum amount of the land revenue in this Presidency when certain conditions were fulfilled, then this Government would heartily concur with the opinion already recorded on previous occasions, "that the time has not arrived, and is probably very

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distant, when any such measure could be adopted without serious injury to the interests of the community, and of the State as representing the community. Then, adopting the views and almost the very words of Lord Napier, our Government went on to observe—" The demands on the resources of the Government on account of improved administration are constantly increasing, and are likely to increase for a considerable period at a very rapid rate; and the improvement of the Government revenue from the extension of cultivation over the large area of culturable waste, is one of the most valuable and legitimate sources of supply to meet those demands to which the Government can look, and on which they may confidently rely; and we are of opinion that the Government would not be warranted in relinquishing any such means for aiding the development of the country, or meeting those claims for most necessary improvements, which are loudly demanded in almost every department. Irrigation works, sanitary measures, communications, education, jails, and many other branches of the administration will, for some time to come, tax to the utmost the resources of the State to effect the amelioration which they require, and demand not only that no additional source of revenue shall be relinquished, but that all shall be improved to the utmost." These are honest, out-spoken words, and reflect all credit on the statesmen who are now at the head of affairs. There is no shrinking from the responsibilities of their position, or any shutting of their eyes to the paramount demands of the people and country committed to their care. The despatch is a manly out-spoken expression of opinion on the part of men conscious of their responsibilities, and of the obligation that lies upon them to lay the whole truth of the case before the Home Authorities, without weakly falling in with the views of the autocrat in Westminster. They at once admit that we need more irrigation works, that our sanitation must be progressive, that our communications have largely to be extended in order properly to develope the resources of the country, that the very administration has to be improved; and that for all this, we must have more revenue than that which we at present draw from the country, the only legitimate and justifiable sources of this additional revenue being the extension of cultivation to land now lying waste, and the improvement of that already under cultivation. This Government then very justly and logically point out that our right to revenue from land is limited by immemorial custom, and is derived solely from ancient authorities, so that it would be quite right to declare to landholders that the *grain* assessments would be permanent; but that at the same time the Government were not called upon to fix the *money* rates for ever, because the ryot is certainly not entitled to a monopoly of the advantages accruing from a rise in prices. In other words, this Government correctly hold that, however wise and politic it may be to relieve the land from oppressive burdens, there should nevertheless be a reciprocity between the State and the ryot as to advantages and disadvantages; and impressed with the justice of these views, they finally recommended that the *grain* rents might be made permanent, but that the *money* rates should be unalterable for only 30 years.

A reply was received in due course, in which the Secretary of State approved of a period of 20 years being adopted for calculating the new commutation rates, and of levying a labour cess in lieu of the ancient *kudimaramut*, or customary village service for the maintenance of irrigation works. In making this announcement, his Grace the Duke of Argyll, however, blew a blast, which in tone was the very opposite of that

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which for some time had proceeded from the council chamber of the India Office. Whereas it was before laid down that the ryot was to have the full benefit of all improvements, his Grace was now not even willing to make the *grain* assessments permanent, and content himself with the liberty to alter the money rates after a time in just proportion to a rise in prices; and he defends his narrower policy on the ground that the Government themselves had declared that the time had not arrived, and was not likely to arrive for a long time to come, for limiting the maximum amount of the land revenue. Taking higher ground than this, his Grace adds that, for the very same reason that this Government wished to retain waste lands as a source of additional income, he could not sanction the surrender of any such legitimate source of revenue as the share of Government in the increased value of land, brought about by improved administration and public works, such as irrigation works and railways. The Duke of Argyll does not intend, he says, to depart from former instructions to keep the assessment distinct from the sum paid for water supplied; but adds that these instructions are not inconsistent with the Government, on a revision of assessment on the termination of the period for which it was made, receiving its due share of the improvement in the value of the land effected by water being brought within reach of it. We venture to affirm that this view is not just; and so this Government think, though they do not assign the reason we are prepared to assign in so many words. We quite agree that it would not be unjust that the Government should share in the profits of the ryot, where those profits accrue to him by a rise in prices, brought about by circumstances over which he could not possibly have any control; but we certainly cannot see why he should lose any portion of the benefits his land has gained by the employment of water which he himself has raised, or for which he has paid. If the ryot did not pay for the water, it would be quite another thing. Then the Government could justly claim to share in the improvement which they had gratuitously effected; but where the ryot pays a water rate calculated not only to cover the cost of the fluid supplied to him, but to yield a percentage on the outlay expended in the construction and maintenance of the irrigation work supplying that fluid, then we contend that the obligation on the part of the ryot is at an end. He has paid for the commodity you have sold him, and you have no right to say you must now give me a share of the advantages accruing from your employment of the commodity I have sold you and for which you have fully paid me already. Mr. Arbuthnot, no doubt, saw the inequality of the principle laid down by the Secretary of State, and he accordingly records a minute objecting to this portion of the despatch. On their part, the Government communicated the despatch to the Board of Revenue and the Director of Revenue Settlement, in view to their acting upon the instructions with which the despatch closed, viz., to generally inform occupiers of land that the recent assessments made by the Settlement Department will be revised after 30 years; but they resolved at the same time to bring again under the consideration of the Secretary of State the expediency of making the grain values permanent. Meanwhile the Board of Revenue objected to the period of 20 years being taken for the calculation of the commutation rates. They urged that this period took in five years only of low prices, while the remainder was made up of ten years of high prices, and five of exceptionally high prices, so that the term selected represented an abnormal condition of the local grain market. They gave several reasons in sup-

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port of their views, and deprecated the adoption of a higher commutation rate for Salem than that proposed by Mr. Puckle, by Mr. Master, and by themselves. The sacrifice of £15,000 for a province larger than Devon and Somerset combined was small, they thought, compared with the risk; and while objecting to the same term of years for the commutation rates being applied to all districts, they urged that the past history of this Presidency was replete with painful evidence of the ruinous consequences of over-assessment, and that the lesson had been too dearly bought to be disregarded. They at the same time gave it as their opinion that it would now be impossible to enhance the assessment where it had been already revised, and promised to write again on the subject of the duration of the assessment. The Government, however, could not agree in the views of the Board, except so far as not to interfere for the next 30 years with the settlements in the districts the assessment of which had been already revised. Then, as regards their resolution to address the Secretary of State again on the subject of making the grain assessments permanent, they forwarded a despatch to the Duke of Argyll, which will be found in its place in another part of our columns. It will be there seen that our Government press the political advantage of giving occupiers of land direct interest in the stability of our rule, by declaring that the actual quantity of the crop now taken will never be increased, and the still greater social advantage of providing a really popular and safe investment for the daily increasing wealth of the country. They point out that the heavy charge of revising assessments every 30 years would be obviated, because the expensive part of the process consists in classifying and investigating soils, whereas the mere adjustment of the commutation rates can be attained without the aid of any special establishment.

Improvements in land always take the shape of improvement in prices, in which the Government will share by their plan of revising the money rates. There is no doubt that this is the just and equitable mode of treating the subject. It is fair to the State, and it is fair to the people. The former principle of giving the ryot the full and entire benefit of all improvements was entirely one-sided. It benefited the ryot alone in the exact proportion that prices increased; whereas the State, which has to protect all branches of the community alike, has to meet increased political and social requirements of all kinds with exactly the same amount of revenue. Hence arose the necessity for taxation on incomes and on justice, and for reducing establishments, which might have been altogether avoided in India, and are certainly utterly uncalled for in Madras. Our plan of looking to cultivation extending to waste lands for additional revenue, and of sharing with the ryot in improvement in price, is a statesman-like measure which does not injure the cultivator, and avoids all annoyance to the other classes of the community. Such a measure it is impossible to carry out in Bengal, where all the land has been parcelled into Zemindaries, the waste chucked into the several holdings, and the payment from each feudatory is fixed and unalterable. We can well see that, in their extremity, the Government might there excusably demand a percentage of incomes to meet the increased wants of the general community. But Madras, and we believe Bombay also, stand on a very different footing. We want no income tax here; and an income tax on us is simply unjustifiable: it is in fact making us pay for bad government in Bengal. Our revenue system is a happy one. It gives us an increasing income with the increase of wealth and prosperity in the country. As waste lands come under the husbandman's plough, he cheerfully contributes his quota

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to the great land revenue of the country. As prices rise, he is happy to share with the State the advantages that have accrued to him, either by the direct operation of the State, or by those advances in countries and among peoples which he has had no hand in effecting. There is a limit, however, to this sharing system, and that limit has been happily fixed by our Government. They say let us share in an increase of prices, but don't let us demand more than the present *quantity* of grain calculated as our share of the ryot's crop. This is what they mean by making the *grain* assessments permanent, leaving the money values to be adjusted after certain periods according to the market of the day. This is a happy arrangement, and must prove substantially advantageous both to the cultivator and his great landlord. It will give the husbandman a direct interest in his land and in its improvement, for the greater the profits the greater his share of the out-turn; while the State has legitimate sources of increased revenue in rise of prices to meet the increased and growing demands of the age. We trust that our Government will not be turned aside from their present policy by random edicts from Westminster. A respectful firmness must surely be successful in the end. Our Government is strong. Lord Napier has grappled with his subject, and he has able advisers in such men as Mr. Arbuthnot and Mr. Sim.

HIGH COURT—MADRAS.

HOLLOWAY AND INNES, J. J.

Hereditary right to manage Dévastan—Pagoda Committee—

A sued B to establish his right to manage a certain Dévastan, and to recover the temple property forcibly taken possession of by B. A contended that the right vested in the family, that he was the senior member, and that the Pagoda committee had confirmed him. B contended that his father had managed, and, as at the time the family had divided, he was entitled to succeed.

HELD *that, as A was the senior member of the family, and had further been confirmed by the Committee, he was entitled to the management.*

R. A. No. 28 *of* 1869.

Vasudeva Kakotaiya *v.* Vishnu Kakotaiya.

THE plaintiff brought this suit to establish his right to the management of the Vishnumoorti dévastan in the village of Madakai, and to obtain possession of certain lands belonging to the dévastan producing annually Rupees 322-2-4, exclusive of a tasdik of Rupees 8 per annum together with mesne profits for three years from 1864 to 1866. The plaint set forth that the right of management of the temple was vested by custom in the senior member of the family; that on the death of plaintiff's father's younger brother (first defendant's father) plaintiff was appointed manager by the second, third, and fourth defendants, who were the committee appointed under Act XX of 1863, and received a sunnud from them in 1864; that in the same year the first defendant forcibly took possession of the temple property, and has since enjoyed the lands, though plaintiff has paid the assessment on them. The plaint further stated that the land No. 3, situated in the village of Madakai, was wrongfully enjoyed by fifth defendant under an alleged usufructuary mortgage bond, executed by the father of first defendant during his management. The first defendant denied that plaintiff's father had ever managed the dévastan, and pleaded that, as the family was divided at the time of his own father's death, he was entitled to succeed to the management. He also asserted that the produce of the plaint lands had been over-estimated by the plaintiff. The second, third, and fourth defendants did not defend the suit. The fifth defendant stated that he held land No. 3 under a usufructuary mortgage executed in 1859 by the first defendant's father, and that, as stated in the deed, the money was advanced by him to defray certain expenses connected with the dévastan. The issues raised were—first, whether the right of managing the dévastan was hereditary in the family of the plaintiff and first defendant, and whether the plaintiff as senior member of the family was entitled to it; second, whether the produce of the plaint lands had been correctly stated by the plaintiff; and third, whether the debt for which a portion of the land was mortgaged to fifth defendant was incurred on account of the dévastan.

The Hon'ble J. C. St. Clair, Civil Judge of Mangalore, found the first issue in favour of plaintiff from a proved order of succession, as well as from the sunnud granted to plaintiff as senior member of the family after the death of first defendant's father. As to the second point, he held that, as the rent of the temple lands had been applied to the maintenance of the temple by the first defendant during his wrongful pos-

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session, he need not pay them now to the plaintiff; but he must reimburse plaintiff for the assessment he had paid, which should have been provided out of the temple funds. As to the mortgage, Mr. St. Clair held it to be proved, and added that as plaintiff had assisted the late manager, and must have been aware of the mortgage, he could not object now as he had not done so before. The Civil Judge, therefore, decreed that the defendants should make over to plaintiff the plaint lands, except 24½ podipads assessed at Rupees 12 and now in possession of fifth defendant under the mortgage deed; that first defendant should pay to plaintiff Rupees 161-13-10, the amount of assessment paid by him up to the date of the decree. Further, the first defendant to pay plaintiff's costs, and the plaintiff to pay those of the fifth defendant. From this decision the first defendant only appealed. Strinivasa Charriar for the appellant; Sunjiva Row for the respondent. The High Court delivered the following

Judgment:—14th January 1870.

It is contended that the only question is one of nomination by the committee. If so, the plaintiff is entitled as their nominee; and his removal could only be for cause, and none has been shown. If it is a question of a prior right only confirmed by the committee, then no ground has been shown for questioning the conclusion of the Civil Judge that that prior right was in plaintiff as senior member; and, if confirmation was needed, the act of the committee was such. The appeal should be dismissed with costs.

INNES AND COLLETT, J. J.

Transfer of interest in charity land—Subject to trust—

In a suit for the recovery of certain land attached to a Tiruvassel, and sold by the trustee to the plaintiff under a deed of sale, one of the pleas set up was that it was contrary to Regulation VII of 1817 to sell charity property. It was then contended by plaintiff that the endowed land was not sold to him, but simply the defendant's right to manage and improve the endowment. The suit was dismissed by the Civil Judge on the preliminary objection that this plea could not hold good; that the sale deed purported to be an absolute sale; and that such a sale of charitable property was contrary to the Regulation quoted.

Held by High Court, remanding case to be tried on its merits, that there was nothing in the Regulation to prohibit an alienation of property charged with a trust, nor was there any other provision of law against a transfer of interest coupled with the performance of a charitable trust.

S. A. No. 390 *of* 1868.
(Civil Mis. Pet. 234 of 1869.)
Ragunada Naiken and another *v.* Chinappa Chetty *alias* Subramania Chetty and six others.

THE plaintiff sued to recover possession of 91¾ gulies of nunjah land from the second and third defendants, being part of some land purchased by him from first defendant under a deed of sale A., dated 2nd May 1864, valued with buildings thereon at Rupees 603; also to establish his right to the said land under said deed of sale, value Rupees 700; and further to recover Rupees 220, the value of building materials damaged in consequence of a complaint preferred by third defendant, through his agent, to the Sub-Magistrate of Mannedam, as well as to recover the fine of Rupees 20 imposed upon him by that authority on said complaint. The third, fifth, and sixth defendants raised a preliminary objection that the plaint was over-valued at Rupees 1,543, and on the report of its Amin the Court estimated it at Rupees 1,371-2-0. The plaintiff alleged that the forefathers of first defendant left certain land and a tiruvassel in Coultragai village for the festival of Sree Soundraja Permaul of Tirucanapuram; that the said family enjoyed the lands and performed the charity. The lands were registered in the pymash accounts. In March 1826 the lands attached to the said tiruvassel were mortgaged for Rupees 67 on usufructuary tenure by the uncle of the first defendant to the father of the second defendant. The mortgagee enjoyed the property, and in May 1864 first defendant redeemed the land from the mortgage and sold his proprietary right therein for Rupees 700 to plaintiff and executed to him a deed of sale (A). Plaintiff received possession of the land except the waste land Nos. 62 and 64 in the pymash registry, which were held by second and third defendants. The tiruvassel was a thatched building, and plaintiff began to build it in stone; he expended Rupees 500, and had other building materials on the ground, when third defendant preferred a complaint to the Sub-Magistrate of Nannelam that the tiruvassel and its lands were common to the village community; and that the plaintiff had illegally commenced building thereon. Plaintiff further alleged that the Sub-Magistrate had exceeded his jurisdiction by questioning the validity of A, and by fining him (plaintiff) Rupees 20 on the said complaint. The first defendant admitted the plaint; the fourth and seventh defendants were *ex parte;* the other defendants put in various pleas, among which was the plea that the sale of charity property was contrary to Regulation VII of 1817; while the ninth defendant, the Sub-Magistrate, answered that plaintiff's suit against him was contrary to Act XVIII of 1850; he had not exceeded his authority, and knew nothing of the

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alleged destruction of the building materials; he was not liable for their loss. The Principal Sudr Ameen of Negapatam, Maurice Cross, Esq., considered the whole case fraudulent and unsatisfactory, and he dismissed the plaintiff's suit with all costs. From this decision the plaintiff appealed to the Civil Court of Tranquebar. The Civil Judge, E. F. Elliott, Esq., without entering into the merits of the case, was of opinion that the suit was barred in point of law, because the property in dispute was for charitable purposes, and could not, under Regulation VII of 1817, be alienated. It was contended for the plaintiff that the endowed lands themselves were not sold to him, but only first defendant's right of management and improvement of the charitable endowment. This view the Court could not take in the face of the deed of sale A, where the absolute sale of the lands is clearly laid down and intended; therefore the Judge held it was a most decided alienation of endowed lands, which the first defendant had not the legal right to alienate, and, therefore, it was invalid in law. In this decision Mr. Elliott held that he was strengthened by the decree of the late Sudr Adawlut, 17th April 1851, S. A. 50 of 1850. He, therefore, affirmed the decree of the lower Court, and dismissed the suit with all costs. The plaintiff appealed to the High Court. Strinivasa Chariar for the appellant. Sunjiva Row for the respondents. The High Court delivered the following

Judgment:—*7th January* 1870.

The sole ground upon which the lower Appellate Court has decided this case is that, whatever the nature of the first defendant's interest in the property, his attempt to transfer the same to the plaintiff was invalid, because the property was charged with a trust in favour of a religious charity. There is nothing in the Regulation referred to to prohibit any such alienation, and we are not aware of any other provision of the law against it; nor do we see how it can be contended that any interest in the property, though coupled with the performance of a charitable trust, may not be transferred by the possessor of such interest; or, if the interest is limited to a right to manage the property, why such right of management may not be similarly transferred. We are, therefore, of opinion that the appeal must be remanded to the lower Appellate Court for decision upon the merits. The costs hitherto to be costs in the cause.

HIGH COURT—CALCUTTA.

PEACOCK, SIR B., *Kt.*, C. J., AND MITTER, J.

Sashi Bhusan Banerjee (plaintiff) *v.* Tarachand Kar and others, (defendants.)*

Evidence—Unstamped bond—Intention to evade the Stamp Laws.

A bond executed between a plaintiff, who sued upon it, and the defendants, contained the following clause, "And, inasmuch as we (the defendants) "are urgently in want of money and are "unable to procure a stamp at the moment, we "have executed the bond on plain paper. Should "it be necessary for you (plaintiff) to bring a suit "against us, whatever penalty you may have to "pay shall be made good by us with interest."

The Small Cause Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the Stamp Law, and refused to receive evidence to the contrary. He also refused to admit the bond in evidence.

HELD, *on reference to the High Court, that the claim in question did not amount to an agreement to evade the Stamp Laws. The Judge might have inferred from it that it was the intention of the parties to evade the Stamp Laws, but in that case he should have heard evidence to the contrary.*

THIS case was referred for the opinion of the High Court by the Judge of Small Cause Court at Ranaghat, under the circumstances disclosed in his order of reference, which was as follows:—

Plaintiff sued on an unstamped bond, and, at the time of filing his plaint, deposited with Nazir the proper amount of stamp duty and penalty required in accordance with Clause 2, Section 17, Act X of 1862.

On the case coming on for trial defendants' pleader objected to the admission of the bond in evidence, on the ground that the omission to execute it on stamped paper arose from an intention to defraud the Government by evading payment of the stamp duty. (Section 15, Clause 1, Act X of 1862.)

On this subject the bond itself contains the following stipulation, "And, inasmuch as we (defendants) are urgently in want of the money and are unable to procure a stamp at the moment we have executed the bond on plain paper. Should it be necessary for you (plaintiff) to bring a suit against us, whatever penalty you may have to pay shall be made good by us, with interest."

It seems to me that this amounts to nothing less than a deliberate agreement between plaintiff and defendants to evade the Stamp Law. There can be no doubt that, had defendants paid the money and so released plaintiff from the necessity of bringing a suit, as it is natural to suppose the intention of both parties to have been at the time, Government would have been defrauded of the stamp duty required for a bond of the amount specified.

Supposing, as is probably the case, that stamp paper was not procurable at the time of the loan, which took place upwards of four years ago, plaintiff, if he really intended to carry out the provision of the Stamp Law, might have had recourse to the Collector under Clauses 1 or 2 of Section 15, Act X of 1862.

It is contended for plaintiff that the parties are not in *pari delicto*, and that it is unjust to allow defendants to take advantage of their own wrong; but I am of opinion that the legal maxim in question has no bearing on the present case, and, as I hold that the words of the contract translated above indicate an intention to evade the Stamp Law, I have refused to receive oral evidence to the

* Reference from the Judge of the Small Cause Court at Ranaghat.

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contrary, and dismiss the case contingently on the opinion of the High Court.

The case was sent back to the Judge to state the point of law upon which he wished the decision of the Court, which was stated by him as follows in returning it:

The question on which I request the opinion of the High Court, and which I regret not having stated more distinctly before, is whether I have rightly construed the extract from the bond before quoted, as containing an agreement between plaintiff and defendants to evade the Stamp Law, which would preclude the Court from admitting the document in evidence under the provisions of Section 17, Act X of 1862.

Baboo *Braja Prasad Bose* for plaintiff.

The opinion of the High Court was delivered by

Peacock, C. J.—We are of opinion that in point of law the construction of the Judge of the Small Cause Court is not correct. The bond certainly did not contain any agreement between the plaintiff and the defendants to evade the Stamp Laws. The stipulation in the bond if true shows that the borrowers were urgently in want of the money and were unable to procure a stamp at the moment, and that they, therefore, executed the bond on plain paper. It was then provided that, should it be necessary for the plaintiff to bring any suit on the bond, whatever penalty the plaintiff should have to pay would be paid by the defendants with interest. That did not amount to an agreement to evade the Stamp Laws. It might have amounted to evidence from which the Judge might have inferred, as a matter of fact, that it was the intention of the parties to evade the Stamp Laws; but in that case it would have been the duty of the Judge to receive oral evidence to the contrary, which he refused to do.—29*th May* 1869.—*Bengal Law Reports, Vol. III, Part XVI.*

Norman and Jackson, E., J. J.

Jalu Namdar and another (defendants) *v.* Beicha Namdar (plaintiff.)*

Act XX of 1866, *Sections* 2, 50—*Registration—Priority of unregistered deed—Lease to take juice from date-trees.*

The right to take juice from date-trees is not, according to Section 2, *Act XX of* 1866, *a right to immoveable property, but falls under the definition of moveable property.*

A registered lease to take juice from date-trees cannot, under Section 50, *Act XX of* 1866, *have priority over an unregistered one of a prior date.*

Baboo *Ambika Charan Banerjee* for appellant.

None for respondent.

The judgment of the Court was delivered by

Norman, J.—In this case the appellants, who are the defendants, claim a right under a lease granted by the proprietor to take the juice of 320 date-trees in Mauza Sunhowli. The plaintiff claims under a similar lease of an earlier date, which is unregistered. The appellants contend that their lease, though later in date, is entitled to priority over that of the plaintiff, inasmuch as it is registered. Section 50 of Act XX of 1866 enacts as follows:—"Every instrument of the kinds mentioned in Clauses 1, 2, and 3 of Section 18 shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered instrument relating to the same property."

Now, the right to take the juice of the date-trees, will not fall within Section 18, Clause 1, unless it is a right or interest to immoveable property. Looking to the definition of immoveable property, in the 2nd Section of the Act, it excludes "standing timber and growing crops." The definition of moveable property in the same section includes "growing crops, grass, fruit upon trees, and property of every other description, except immoveable property."

The question is, does the right to cut date-trees and take the juice produced by them fall within the description of immoveable property, as the term is limited in the 2nd Section.

The definition is as follows, "Immoveable property includes land, buildings, right to ways, lights, fisheries, or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to any thing which is attached to the earth, but not standing timber, growing crops, nor grass." The juice of date-trees, from which sugar is made, being produced annually at the season of growth, falls nearly within the description of a growing crop. The right to take the juice in future years from standing trees, from which it is produced without cultivation, is more nearly described as a right to, or benefit arising out of, standing trees or timbers, than a right or benefit to arise out of land, such as is described as immoveable property. On the whole, therefore, though not without some doubt, we think that the 50th Section has no application to a lease of a right to take the juice of date-trees.

We, therefore, affirm the decision of the lower Court. The appeal must be dismissed with costs. —28*th August* 1869.—*Idem.*

Bayley and Hobhouse, J. J.

Abdul Hamid (defendant) *v.* Dongaram Dey (plaintiff.)*

Enhancement—Jurisdiction of Collector.

A suit for enhancement of rent of a dwelling-house in a village is cognizable by the Collector.

Baboo *Hari Mohan Chuckerbutty* for appellant.

Baboos *Nalit Chandra Sen* and *Rama Nath Bose* for respondent.

Bayley, J.—The plaintiff in this case sued the defendant as holding certain *Bhita* lands in his use and occupation, which *Bhita* lands he alleged were part of his taluk purchased by him.

The defendant's allegation was that the lands were not in the taluk alleged by the plaintiff, but were in another taluk in which he was a co-sharer with the plaintiff.

The first Court, after a remand by the lower Appellate Court, finally decided, on the 21st October 1868, that it had not the "smallest doubt "that the lands are part of plaintiff's purchased

* Special Appeal, No. 2,755, of 1868, from a decree of the Subordinate Judge of Bhagulpore, dated the 6th [illegible], affirming a decree of the Munsiff of that district, dated the 28th February 1868.

* Special Appeal, No. 780, of 1869, from a decree of the Judge of Tippera, dated the 26th January 1869, affirming a decree of the Officiating Deputy Collector of that district, dated the 21st October 1868.

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"taluk;" and then the Court goes on, "as no "objection has been made to the rate of rent, "and as defendant, having held and enjoyed the "lands since the sale, is liable to an equitable rent "for them, I give a decree for Rupees 10-14-0, and "costs Rupees 4-4-0, and fees Annas 8-9. Total, "Rupees 15-10-9."

On appeal, the Judge records: "I think with "the Deputy Collector that the defendant holds "rent-paying land and land for which rent has "been received by plaintiff's predecessor, within "the plaintiff's taluk. The evidence is scanty on "this point, but I think sufficient." Then, as regards the rates, the lower Appellate Court remarks: "I do not think that the defendant in "his deposition on oath before this Court, and "which with the plaintiff's statement formed the "grounds from which to frame issues, raised any "objection as to the rates so that it is necessary "now to return this case for trial on this point." The lower Appellate Court then concludes its judgment by dismissing the appeal with costs.

The defendant appeals specially.

The fifth and the last ground is that the provisions of Act X of 1859 have reference only to lands held for agricultural and horticultural purposes, and not to lands on which actual dwelling-houses are erected, and held by persons other than actual cultivators.

In regard to the last plea that this being a case for lands for building purposes, the provisions of Act X of 1859 do not apply. *Kali Mohan Chatterjee* v. *Kali Krishna Roy Chowdhry** has been cited. But the facts of that case were totally different from the facts in this. There the building was part of a range of buildings in the centre of the town, and, therefore, the rent of those houses would not fall within the purview of Act X of 1859.

It is to be here also noticed that part of the land occupied by defendant was not occupied by the house, and besides this the point was not taken in either of the Courts below.

On the whole, I see no error in law in the judgment of the lower Appellate Court, and I would, therefore, dismiss this appeal with costs.—*12th July* 1869.—*Idem.*

* 2 B. L. R., App., 39.

HER MAJESTY'S PRIVY COUNCIL.

[Bengal Cases.]

Zemindaries—Boundaries—Survey awards.

A Zemindar sued two neighbouring Zemindars for the recovery of 5,000 *beegahs as being within the boundary line of his Zemindary, and to set aside the awards made by the Survey officers with reference to the boundary line. Both the lower Courts dismissed the suit.*

Held *by the Privy Council (affirming the judgment of the Courts below) that the Survey awards, if questioned in time, are not conclusive upon the question of title; and that their Lordships would be extremely reluctant to reverse the judgment of an Indian Court upon a boundary question, unless they were clearly satisfied that it was wrong.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Rajah Leelanund Singh *v.* Rajah Mohendernarain Singh and Rajah Jyemungul Singh, from Bengal; delivered 10th December 1869.

Present.

The Master of the Rolls.
Sir James W. Colvile.
Judge of the High Court of Admiralty.
Sir Joseph Napier.

Sir Lawrence Peel.

The appellant is the present possessor of the large zemindary known as the Kurruckpore Mehals, which includes the whole of Pergunnah Singhol; and one of the Mouzahs composing that Pergunnah is called Kusbeh Budholee. This zemindary formerly belonged to one Rajah Kadir Ali, from whom it descended, first to his son Ikbul Ali Khan, and afterwards to his grandson, Ruhmet Ali Khan; but in 1842 it was sold for arrears of Government revenue, and was then purchased by Rajah Bidanund Singh, the father of the appellant.

Abutting upon Pergunnah Singhol and on the west and south of it is Pergunnah Chundun Bhooka. This includes the Mouzahs of Jankeepore, Ahsur Chand *alias* Kuchwa, and Ahsur Biscoond. The two former of these form part of the zemindary of the respondent Mohendernarain Singh, who is the son and successor of Rajah Nirbye Singh. The other village forms part of the zemindary of the other respondent, Rajah Jyemungul Singh, who is the representative and successor of Rajah Nuwab Singh.

The question in the suit is one of boundary between the two Pergunnahs, Singhol and Chundun Bhooka, *i. e.*, whether the 5,000 beegahs of which the appellant, as plaintiff, seeks to recover possession, form part of Kusbeh Budholee, and, therefore, lie within the proper boundary line of Pergunnah Singhol; or whether they are included partly in the villages of Jankeepore and Kuchwa, and partly in that of Biscoond, and, therefore, lie within the proper boundary line of Chundun Bhooka.

From this statement, however, it follows that the portions of the disputed land which are held by the respondents respectively may be so held by them by different titles; and that, although the principal question of fact, *viz.*, the true position of the boundary line between the two Pergunnahs, is common to both, the one may, in respect of long possession, be in a more favourable position than the other; and that that which may be evidence against the one may not be evidence against the other. And this being so, it is perhaps unfortunate that the appellant's claims against the two respondents should be litigated in one and the same

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suit. The suit is brought not only for the recovery of the lands in question; but, as a necessary step towards that object, to set aside certain awards passed by the officers employed to conduct the revenue survey in this district, and to obtain a rectification of the boundary line as defined by them. The suit was brought within the period in which the law allows such awards to be contested in a regular suit. But their Lordships need hardly observe that the plaintiff in such a case has to overcome the strong presumption which the decision of such a question as this by competent officers after full local inquiry, made with the aid of a scientific survey of the locality, is calculated to raise against him.

It may be convenient, in the first place, to state shortly what is the effect of the survey proceedings which are impeached. The line laid down by the survey as the northern boundary of Pergunnah Chundun Bhooka, and the southern of Pergunnah Singhol, is not a river, but seems to be almost identical with the chain of hills which on the map of Hoolas Roy (A), which has been so much discussed in this case, are delineated as running east and west between the Jorbarara and the stream which he calls the Punjhairee Khoord. To these hills we may give the name, which is applied to them in some of the proceedings, of Suhoodree.

There was throughout the survey proceedings a dispute between the appellant and the respondent Mohendernarain Singh, or Nirbye Singh his father, touching the possession of the lands sought to be recovered from the last-named respondent. The earlier proceedings treated that portion of the land in dispute as falling within the Mouzahs of Pergunnah Chundun Bhooka, which belong to Mohendernauth. Mr. Brown was dissatisfied with this finding as being inconsistent with Hoolas' map (A); he objected to Birjobookun's map B, and directed that there should be a further investigation, and a comparison of the country with the map A. He also proposed to go himself to the spot and decide the question of possession. He never did so; and the question was finally decided by Mr. Quintin, after local inquiry and investigation, in his proceeding of the 24th of December 1847.

The case as to the lands sought to be recovered from the respondent Jyemungul Singh is somewhat different. When the survey of these lands first took place the appellant raised no claim to them. The contest was between the respondent Mohendernarain Singh saying that they belonged to his village of Ahsur Chand *alias* Kuchwa, and Jyemungul Singh saying that they belonged to his village of Biscoond. The decision was in favour of the latter.

In the final proceeding of December 1848, before Mr. Wood, (Appendix, p. 256,) and two years after the commencement of the dispute between the respondent, the appellant did intervene as third party, and ineffectually claimed the lands as part of Pergunnah Singhol. But his omission to come forward before that time affords a strong presumption that he was at the commencement of the survey out of the possession of these lands, if he had ever been in it.

These survey awards are founded on evidence of the actual possession. They are not, if questioned in time, conclusive on the question of title.

Their Lordships will now consider upon what evidence of title the appellant seeks to impeach them.

The earliest piece of evidence is the proceeding of 1816 before a Mr. Sutherland, described as a Registrar of the Civil Court of Monghyr, who appears, under the law then in force, to have exercised a jurisdiction in questions of possession similar to that which is now exercised by the Magistrates under Act IV of 1840.

The complaint was brought by Rajah Kadir Ali against the lessees of part of Pergunnah Chundun Bhooka, and seems to have been directed rather against encroachments upon wild and jungle land, for the purpose of collecting the forest products, than against any actual occupation of cultivated soil. One Rajah Juswunt Singh, however, describing himself as the proprietor and zemindar of Pergunnah Chundun Bhooka, intervened, and the question what was the true boundary between the Pergunnahs was thus raised between the two zemindars.

Those stated by the Zemindar of Singhol were:—"To the west is Gheedha Ghaut and Churhee Khoord, (by which we understand a line drawn from Gheedha Ghaut to Churhee Khoord,) to the east is Dabeedah and to the north is a great mountain, and south is Punjhairee Khoord."

The statement of Juswunt Singh was that the boundary of his lands extended "from the west of Dabeedah straight along as far as the Soordhobee and Sunkareerekh and Sireekabutan." It is not easy to identify all these names; but the conclusion to which their Lordships have come is, that this statement makes the southern boundary of Singhol that line of hills above called Suhoordree, which is admitted by the respondents to have been the dividing line as regards actual possession and enjoyment, and has been fixed as such boundary by the survey proceedings. If this be so, it follows that Juswunt Singh asserted no title to the land lying to the north of these hills, and between them and the Jorbarara; and that he did not treat that stream, or any other stream, under the name of Punjhairee Khoord, as the boundary between the two Pergunnahs. On the other hand, the issue thus raised between

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the parties seems to admit that the Punjhairee Khoord was to the south of that line of hills; and that the controversy was about the lands claimed in the present suit, or part of them.

Mr. Sutherland's decision was in favour of Kadir Ali, and directed that the disputed land should remain in his possession according to the before-mentioned boundaries, until the decision should be rescinded by an action under Regulation X of 1793. In 1817, one Budhnarain was sent by Mr. Sutherland to mark out the western boundary between the Pergunnahs, in accordance with the last-mentioned decision; and that, starting from Gheedha Ghaut and proceeding southward to some point or another, he did place certain boundary pillars is undisputed. His own statement, made on oath in January 1830, is, that they extended southward as far as the Punjhairee Khoord, and that that stream is south of the Punjhairee Kalan.

Juswunt Singh and Nirbye Singh, who then first appear on the stage, declined to take any part in this demarcation, and intimated that they intended to dispute Mr. Sutherland's order in a regular suit. No such suit was, however, brought.

It will be convenient here to inquire upon what parties this proceeding of 1816 was binding, and what lands did it cover?

It may be taken to have bound Juswunt Singh who was a party to it, and those who claim through him. It may, therefore, be taken to have bound Nirbye Singh, and, after him, the respondent Mohendernarain Singh. But is it binding on Jyemungul Singh, or was it binding on his father and predecessor, Nuwab Singh? That depends on the question how far either derived title from Juswunt Sing; and the evidence is unfortunately either very scanty or altogether silent on their connection with Juswunt Singh, and as to the time at which, and the manner in which, Pergunnah Chundun Bhooka became divided between two distinct zemindaries. The Principal Sudr Ameen in his judgment speaks of Juswunt Singh as the "moories" of the *defendants*. And "moories" is, we apprehend, the same word as "meeras," which, in Professor Wilson's dictionary, is defined to be the person through whom an inheritance is derived. On the other hand, the judgment of the Sudr Court speaks of the proceeding of 1816 as made against the ancestor of *one* of the defendants. Again, the report of Hoolas Roy alludes to the proceedings on a partition between Nirbye Singh and Nuwab Singh, and speaks of Juswunt Singh as the elder brother of both. Chunderchain Singh, (Appendix, p. 260, line 35,) a witness of Jyemungul Singh, also speaks of such a partition.

That the respondents, therefore, held their respective portions of Pergunnah Chundun Bhooka under a title which, up to some date, is a common one, seems probable; but there is little, if any, direct evidence of the fact, and still less of the date at which the separation in title commenced.

There is no statement in the proceeding of 1816 of the specific quantity of the land then in dispute, and the complaint seems to have been of invasion on the part of the tenants of Juswunt Singh occupying lands to the west of the westward boundary. Juswunt Singh, however, claimed all the land which lay south of the line of hills which he said was the southern boundary of Singhol and west of Dabeedah, (which we take to be the range of hills on the east of the now disputed land). The question was, whether south of the line of hills the eastern boundary of Pergunnah Chundun Bhooka was the Dabeedah range, or a line prolonging the line from Gheedah Ghaut to that line of hills up to the Punjhairee Khoord; and the controversy so stated seems to embrace the whole of the lands now in dispute.

The respondent Jyemungul Singh, whether bound or not by the proceedings of 1816, is certainly not bound by those from 1829 to 1832, in which Hoolas Roy and Motu Roy made their conflicting reports. These proceedings were occasioned by a dispute which arose between Rajah Nirbye Singh and the then Zemindar of Singhol, after the supposed partition between Nirbye Singh and Nuwab Singh, (Appendix, p. 47, line 60,) and were confined to that portion of the disputed land which is west of the Punjhairee Kalan, (Appendix, p. 46, line 7). It did not, therefore, embrace the land which the appellant now seeks to recover from the respondent Jyemungul Singh.

It was in these proceedings that, in order to get rid of the effect of the order of 1816, Nirbye Singh first raised the point that the Punjhairee Khoord mentioned in that proceeding was identical with the stream marked in map A. as the Jorbarara. Neither the respondent Jyemungul nor his immediate ancestor, Nuwab Singh, was a party to that issue, nor is the former responsible for the inconsistency which it involves, in claiming a boundary inconsistent with the admitted possession. On the contrary, some of the witnesses produced by him in this cause speak of the southern boundary of Pergunnah Singhol as the line of hills which has been assigned as such boundary by the survey proceedings, and such was the boundary asserted by Juswunt Singh in the proceeding of 1816.

We cannot find that Jyemungul Singh has in any way made the identity of the little Punjhairee and the Jorbarara a material question, unless it be by the 13th paragraph of his answer. And in that he seems merely to raise the question whether Budhnarain had lain down the western boundary, or the dispute of 1816 had extended further to the south than the latter stream. He does not admit that the southern

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boundary of the Singhol is the little Punjhairee, whether north or south of the line of hills. On the contrary, by paragraph 15 he distinctly asserts that the line of hills is the true boundary.

If the case rested here, their Lordships, considering the scanty evidence afforded by the proceeding of 1816, would have felt that no sufficient ground had been laid for setting aside the survey proceedings against the respondent Jyemungul Singh, or even against Mohendernarain Singh. The real difficulty in the case has been occasioned by the way in which the cause has been conducted in the Courts of India by the counsel for the parties, who seem in argument to have accepted as a fact that the southern boundary of Pergunnah Singhol was a river called the Punjhairee Khoord, and to have disputed concerning the position of this stream, and the accuracy of the map of Hoolas Roy. They probably took this course because they felt pressed by the effect of the proceeding of 1816. The Principal Sudr Ameen's judgment proceeds almost entirely upon the preference which he gives to the map of Hoolas Roy over that of Birjobookun. But the map of Hoolas Roy is really a document of very slight authority. He differed from the other arbitrator who was appointed conjointly with him to settle that particular dispute, and no final order was passed in that matter. His map and report were before the Revenue authorities when they made the survey and the survey awards, and were ultimately disregarded by them. When this case came on appeal before the Sudr Dewanny Adawlut, the Judges of that Court observed, as their Lordships think with great justice, that they were bound to treat the survey proceedings as correct so far as the appearance of the country is recorded therein, and, failing to find in the survey map any stream which corresponded with the stream set down in Hoolas' map, they rejected that map, reversed the Principal Sudr Ameen's decision, and dismissed the appellant's suit. Afterwards, on a suggestion that there was in the survey map a stream which might correspond with the Punjhairee Khoord of Hoolas' map, they granted a review, and directed a further local investigation into the existence of this stream by an Ameen. The Ameen made a report in which he describes an intermittent stream, dry in some places, flowing in others, which he traced in the jungle. The Judges of the Sudr Dewanny Adawlut upon this report adhered to their former judgment dismissing the suit. When the appeal was heard here we had not before us their reasons for this conclusion, and we caused a communication to be made to India, of which the result is that the final judgment of Mr. Raikes is now before us. That Judge, with better means of forming a judgment on such a point than their Lordships have on the materials before them, came to the conclusion that the stream described by the Ameen did not correspond with the Punjhairee Khoord laid down in Hoolas' map, or with the description given by the appellant's vakeels of the alleged boundary of his zemindary. Their Lordships, after full consideration of the case, are not prepared to say that that conclusion is erroneous. They must observe that upon a boundary question they would be extremely reluctant to reverse the judgment of an Indian Court unless they were clearly satisfied that it was wrong. If it had been shown that there was a well-defined stream corresponding, or nearly corresponding, with that laid down in Hoolas' map, they might have felt that, considering the proceedings of 1816 and the way in which the parties have conducted their case, the survey awards ought to be reversed. But, as the evidence stands, they feel that the position, course, and very existence of the Punjhairee Khoord are left in such uncertainty, that if the boundary laid down by the survey proceedings were altered, it would be impossible, with any certainty, to fix the boundary to be substituted for it. And in these circumstances they must humbly recommend to Her Majesty that the decree under appeal be affirmed, and this appeal be dismissed with costs.

Sebait—Rent—Variable character.

In a suit brought by the plaintiff against a sebait for the recovery of certain jummas as hereditary, and also as held at a fixed rent—

HELD *(reversing the decision of the High Court) that there was no satisfactory proof in the cause that these jummas were ever held at a fixed invariable rent; that to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a sebait; and that where the variablenes of the jummas was the normal condition, the mere naming a sum certain in connection with the grant of a descendible nature does not import of itself fixity to that sum, in the absence of positive words, or of other evidence to show that such was the original design.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Maharanee Shibessouree Dedia *v.* Mothooranath Acharjo, from Bengal; delivered 18th December 1869.

Present.

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
JUDGE OF THE ADMIRALTY COURT.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THIS appeal was heard before their Lordships *ex parte.*

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The suit out of which it arose was brought in the Civil Court of Jessore by Mothooranath Acharjo, the sole plaintiff, against Maharanee Kestomonee Debia, described as sebait of a talook, dedicated to the service of the deity, and against certain other persons named in the plaint. It was brought to establish a title to certain jummas, and to recover possession of certain lands connected with them, which the plaintiff claimed by purchase from four of the defendants, Mahomedan ladies, who descended from one Gouromohun Biswas, a Hindoo, on whom, as the plaintiff avers, the right to the jummas transferred to him was originally conferred.

The present appellant represents the interests as guardian of her infant, which, at the commencement of the litigation, were represented by the Maharanee Kestomonee Debia, since deceased, his grandmother, appointed his guardian under the direction of his deceased father. The tenure, whatever its strict character, whether ryotwary or of a higher degree, is one held under the infant's title, as superior owner of the lands.

The jummas were claimed by the plaintiff as mourusue (hereditary), and also as held at a fixed invariable rent.

The appellant, the sebait, denies the hereditary character of the tenure, the invariable quality of the rent, and the purchase itself. She stated that the tenants of the jummas, from whom the plaintiff asserted that he had purchased, had not any hereditary tenure, and that they had surrendered such interest as they possessed to the appellant before the time of the alleged sale to the plaintiff. •

Of the four defendants, the alleged vendors, three denied the sale and affirmed the surrender, whilst the fourth affirmed the sale and denied the surrender, agreeing, three of them with the appellant, and one with the plaintiff. They all, however, insisted on the hereditary character of their tenure.

The talook itself, with which these jummas were connected by tenure, was dedicated to the religious services of the idol. The rents constituted, therefore, in legal contemplation, its property. The sebait had not the legal property, but only the title of manager of a religious endowment.

In the exercise of that office she could not alienate the property, though she might create proper derivative tenures and estates conformable to usage.

The sale under which the plaintiff claimed was established by the decree of Mr. Seton-Karr, the Judge of the Civil Court of Jessore, who tried the cause.

On appeal from his decision it was affirmed by the High Court.

Two Courts, therefore, have established the sale to the plaintiff, and have decided against the validity of the alleged surrender.

Into the sufficiency of the evidence to support those several findings their Lordships do not propose to inquire; their judgment on this appeal will be confined to the question whether a tenure held at a fixed invariable rent has been established by the evidence.

The appellant insisted on the authority of Prosoonnocoomars' case, which she quoted in her answer, and which was relied on in agreement at the bar that a transfer of such a tenure as that set up in his case, which she termed a ryotwary tenure, could not be effected without the consent of the Zemindar or Talookdar, as the case might be, the immediate successor in estate. The Judges in both Courts decided that this tenure was one at a fixed rent, and that the case in question did not apply. On the question of its vendible character without the condition of the superior's consent, they pronounced no opinion. A question of this latter character is likely to be one so much affected by modern and local usage that it would be unsafe for an ultimate Court of Appeal to express an opinion upon it as a mere dry, legal question turning on the incidents of hereditary tenure. Their Lordships would be most reluctant to decide on an *ex parte* appeal any question of general consequence not absolutely necessary to the decision of the particular case.

If the decrees appealed against stood unreversed, the title to hold at a fixed invariable rent would, on the pleadings and especially on the judgments, be viewed as *res judicata* binding on the parties and those claiming under them.

Their Lordships think that there is no satisfactory proof in the cause that these jummas were ever held at a fixed invariable rent. One important element in this inquiry has been wholly lost sight of, namely, the nature of the sebait title, and its legal inability to be the source of such a derivative title. To create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a sebait, and is not, therefore, presumable. Where variableness of jumma is the normal condition, the mere naming a sum certain in connexion with the grant of a descendible tenure does not impart of itself fixity to that sum, in the absence of positive words or of other evidence to show that such was the original design. In this case we start with a double presumption against the rent having been fixed, viz., that founded on the ordinary character of rents, and that derivable from the special character of the tenure. Another presumption arises in this case, that the rent was variable, from the circumstance that the only instrument which asserts positively that

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the jumma is to be at a fixed rent, is one of the three documents on which the signature of Mr. Skinner, the Magistrate, was fabricated. This fraud in tampering with evidence throws additional doubt upon this part of the case.

The terms of the surrender relied on by the High Court do not state that the rent is fixed and invariable; that document, on which the High Court laid great stress, appears to their Lordships to afford but a slight presumption that the sebait adopted and admitted that description of the tenure on which the surrenderer relied, though by accepting the surrender she acquiesced in the use of that description by them; and as the instrument does not say that the rent was fixed as well as the tenure hereditary, the implied recognition of the right can be raised no higher than the actual language warrants. The tenure, therefore, at a fixed rent was, in the opinion of their Lordships, not proved. The acts of the plaintiff cannot be ascribed to a valid title to possession under the circumstances of this dispute, since the only title insisted on in the contest between him and the superior, namely, the right to hold at a fixed rent, is not established, and the general right of the Zemindar or Talookdar to receive the collections, subject to account, till a valid claim to an intermediate tenure be established must prevail, *ad interim* at least, until the plaintiff, if he think it for his interest to rely on the mourusue title at a variable rent, establish it by a suit founded on that title, in which suit the true nature of the tenure, and its freedom from the conditions of the superior's assent to the transfer of the tenure, may be ascertained. Their Lordships will, therefore, humbly advise Her Majesty that this appeal be allowed and the decision appealed against reversed, and in lieu thereof the respondent's suit be dismissed with costs, and their Lordships think that the appellant should have the costs of the appeal.

Boundary dispute—Intermittent action of Revenue authorities—Equitable claims of holder—

Where, with reference to the definition of the boundaries assigned in a Talukdari pottah granted in 1805, *at a nominal rent, to the individual under whom the plaintiff claimed, and part of the holding was subsequently disputed by the Revenue authorities as encroachments on Government land, and where the litigation had gone on with various intermissions from* 1830 *to* 1863 *when the High Court decided, partly in favour of claimant and partly in favour of Government—*

HELD *that the only question in issue was whether the plaintiff was entitled to hold against Government, at a perpetual rent almost nominal, the large quantity of land, alleged to be comprehended within the pottah boundaries; but that there was nothing to prevent the Government from taking into consideration in the assessment of the revenue upon the resumed chucks, whatever equities might arise from such an expenditure as was represented to have been laid out in reclamation of waste, or from giving effect to any preferential right to a settlement ordinarily allowable to persons found in occupation of such lands, especially as plaintiff had held under a claim of right which was not put forward* malâ fide, *and which was made more colourable by the intermittent action of the Revenue authorities during a long period.*

Judgment of the Lords of the Judicial Committee of the Privy Council, on the appeals of Khajah Abdool Gunny *v.* the Commissioner of the Soonderbuns, on behalf of Government; and the Commissioner of the Soonderbuns, on behalf of Government, *v.* Khajah Abdool Gunny, from Bengal; delivered 26th January 1870.

Present.

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
JUDGE OF THE HIGH COURT OF ADMIRALTY.

SIR LAWRENCE PEEL.

THESE two appeals relate to different parcels of land; but they involve the same question, namely, the construction of the definition which a pottah, executed in 1805, has given of the boundaries of the land granted by it.

In both suits the plaintiffs were Abdool Gunny and other persons, claiming as purchasers from the original grantee under the pottah, and the defendant was the Commissioner of the Soonderbuns, representing the Government. The final decision in India was favourable to the Government in one suit, and adverse to it in the other; and each party being here as appellant in one case and as respondent in the other, it will be convenient to speak of them respectively as the plaintiffs and the defendant.

The pottah in question was granted on the application of one Ramdhone Chatterjee. By his petition to the Collector of Dacca, dated the 12th of Falgoon, B. S. 1211, he petitioned for Talookdaree Pottah of the woody Mouzah Aelateerkhallee and Mouzah Phooljhooree, per boundaries detailed at the foot, excepting what has been given in Butwara in Gursoonderbun, at the fixed gross rent of 349 sicca rupees, including cesses, with allowance for seven years for cultivation. And the boundaries stated at the foot of the petition were as follows:—

Mouzah Aelateerkhallee, bounded on the north and east by the Aeladoon, on the south by the Purwah river, the west by the river Bhyong down to the Khagdoon.

Mouzah Phooljhooree, bounded on the north by Phooljhooree Doon, on the east and south by Khagdoon, and on the west by the Bheeskhally river.

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The Collector on the 18th March 1805 submitted this petition to the Board of Revenue with a recommendation that its prayer should be granted; and, having obtained the sanction of Government, he executed the pottah in favour of Ramdhone Chatterjee on the 9th April 1805.

The original instrument was in Persian, and some additional uncertainty has been introduced into the case by the circumstance that in some of the proceedings the only evidence of the grant that was produced was a Bengalee translation of the Persian pottah.

Their Lordships have now at p. 57 of the second record what purports to be, and what they have no doubt is, an English translation of the Persian document. The translation of the Bengalee document is at p. 12 of the first record.

The only material difference between them is that, whereas the description of the western boundary of Mouzah Aelateerkhallee in the Persian document exactly corresponds with that given by the petition, on which the pottah was granted, namely, "the river Bhyong down to the Khagdoon;" the western boundary of that Mouzah is defined by the Bengalee document to be "the ebb of the Bhyong river as far as the Khagdoon."

In all other respects the two instruments substantially agree, each purporting to be a Talookdaree Pottah, granting the lands in question for ever, on the terms of paying no rent for the first seven years, and of paying, after the expiration of that period, a fixed immutable rent of 349 sicca rupees.

Rhamdhone Chatterjee obtained possession under this pottah, and the plaintiffs are admitted to have acquired his rights, whatever they may have been, by purchase. The devolution of their title it is unnecessary to trace.

The present litigation began as early as 1830. On the 12th March in that year, Mr. Dampier visited the spot as the Commissioner of the Soonderbuns, appointed under the then recent Statute, Regulation III of 1828. His functions were to define the limits of the Soonderbuns, which were expressly excepted from the decennial settlement and declared to remain the property of Government, and to resume and re-assess all lands under cultivation within their limits, unless the Government had by some means lost its right to resume them. This resumption was to be effected by proceedings under Regulation II of 1819, which was passed for regulating the procedure for the resumption and assessment of lands held under a disputed claim to hold them as lakhiraj.

Mr. Dampier's proceeding of the 12th March 1830 states that he found west of the Aeladoon an "abad" called Aela, the property of Moulvie Hafizoollah, (through whom the present plaintiffs claim); that the abovenamed Hafizoollah took possession of the lands of the jungles of the Soonderbuns, the property of Government, called it Aela, cultivated it, and was doing so then; that the "abad" was part of the reclaimed jungles of the Soonderbuns; and that the lands and jungles comprised in it did not form part of the decennially-settled zemindary of any Zemindar. He accordingly declared it subject to the claim of Government for resumption and re-assessment; but left to the Collector of the district the task of taking the steps necessary for the assertion of that claim, and directed a map of the jungles to be made, and notice of his proceedings to be issued to the Zemindars, Tahsildars, &c.

On the 5th March 1830 Mr. Dampier had passed a similar order as to Phooljhooree. The plaintiffs, or some of them, appealed from these proceedings to Mr. Walpole, an officer described as the Commissioner of Calcutta, under the provisions of Regulation III of 1828. They admitted that the lands in dispute were within the limits of the Soonderbun jungles, but set up their title under the pottah of 1805. The proceeding of Mr. Walpole of the 24th August 1830 states that Mr. Dampier, on being referred to for explanation, had stated that at the date of proceeding no original pottah had been produced; but that on inquiry it appeared that such a pottah had been granted, and that accordingly Government withdrew its claim. The order was that the lands included within the pottah be, as before, in the possession of the declarants under the conditions therein mentioned. But no attempt seems then to have been made to ascertain precisely what lands were included in the pottah.

At that time, therefore, it seems to have been admitted on both sides that the lands in dispute were within the limits of the Soonderbuns; that the plaintiffs, under the pottah granted in 1805, were entitled to hold, at the fixed rent of 349 sicca rupees, some lands within those limits, and that the only question between the parties as to any particular lands in dispute was whether they were within the boundaries defined by the pottah.

It would appear, however, that proceedings had in the meantime been commenced under Regulation II of 1819 for the assessment of Aelateerkhallee, pursuant to Mr. Dampier's first order; for, by a proceeding of the 19th August 1831, Mr. Dampier, as Commissioner of the Soonderbuns, formally dismissed such a suit. And his proceeding was afterwards confirmed by the Commissioner of the Division, Mr. Barwell, on the 31st January 1833.

The subsequent proceedings before the Revenue authorities, though very voluminous and extending over many years, seem to their Lordships to require but brief notice.

The position of the parties remained as the abovementioned proceedings before Mr. Dampier had left it until 1843. In that year Mr. Sturt,

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the Collector of Backergunge, being on an official tour through this part of the Soonderbuns, observed the extension of cultivation in parts of the land in dispute, and, conceiving that it was liable to assessment for Government revenue, caused the map of it, which in the argument has been called "Sturt's Map," to be made. That map divides the whole land in dispute into the following portions or chucks, namely:—No. 1, being Phooljhooree; No. 2, called Kewraboonia; No. 3, called Aelateerkhallee; No. 4, called Boorissur; No. 5, called Burgonah; No. 6, called Dhullooah; and No. 7, Nultollah. He seems to have intended to institute seven separate suits for the resumption of these seven chucks; but his hand was stayed by an order of the Commissioner of the Division, Mr. Dunbar, of the 16th September 1845, which directed him to refrain from instituting any claim for the assessment of revenue on any lands within the boundaries recorded in the pottah, but left him free to sue in respect of land beyond those boundaries. No suit, however, was then brought.

In January 1846, the office of Commissioner of the Soonderbuns, which for a time had been suppressed, was revived; and in 1849 proceedings embracing all the seven chucks were pending before Roy Omacaunt Sein, the then Commissioner of the Soonderbuns, for ascertaining the extent of land beyond the pottah granted by Government on the 17th April 1805, and for the assessment of revenue thereon. By his proceeding, dated the 6th May 1849, the last-named Commissioner ruled that, although the Talookdars had by means of cunning improperly appropriated and taken possession of some land belonging to Government on the plea of their pottah, but which was unconnected with, and beyond, the boundaries recorded in the pottah; the question before him was, nevertheless, concluded by the proceedings before Mr. Dampier, and he accordingly struck the case off the file. This decision was brought by appeal before Mr. Mills, who, as one of the Judges of the Sudr Dewanny Adalut, had special jurisdiction, as the ultimate Court of Appeal, over the awards of the Revenue officers in resumption cases; and he, by an order dated the 17th December 1851, reversed it, and remitted the case for trial, on the questions whether the lands in dispute were within the boundaries mentioned in the pottah, or were included in the decision of Mr. Dampier.

The case so remanded was tried first by Mr. Deputy-Collector Smith and afterwards came on appeal before Mr. Grote, as Commissioner. The result was that chuck No. 1, being Phooljhooree, was permanently released from the claim of Government, being found to be within the pottah boundaries, and, as such, to have been released by Mr. Dampier; that chucks Nos. 5, 6, and 7 were resumed as being beyond the pottah boundaries; and that chucks Nos. 2, 3, and 4 were reserved for further consideration by the Commissioner, who directed another survey map to be prepared of them. Mr. Grote's order bore date the 25th July 1856.

On the 11th May 1857 the plaintiffs commenced the regular suit out of which the first of these appeals arises. Its object was to set aside the Commissioner's order of the 25th July 1856, and for the maintenance as theretofore of the plaintiffs' title and possession as Talookdars over the three chucks described as Nos. 5, 6, and 7, containing about 80,000 beegahs in the village of Aelateerkhallee.

Of the issues settled in the suit it is necessary to notice only two, namely:—

1*st.*—Are the lands claimed within the limits of the pottah of the 17th April 1805, or not?

2*ndly*, (and this is an additional issue framed at a later period by the Judge).—Did Mr. Dampier, the Commissioner of the Soonderbuns, include the land in dispute within the scope of his inquiries? Did he release the disputed lands, and were his orders confirmed by the Special Commissioner? And is the land in dispute beyond the scope of the inquiries instituted by Mr. Dampier, the former Commissioner of the Soonderbuns.

Mr. Kemp, the Judge of Zillah Backergunge, found both these issues in favour of the defendant, and dismissed the suit. His judgment was confirmed on appeal by the High Court of Calcutta on the 11th May 1863, and the first appeal, of which it will be convenient now to dispose, is against those two decrees.

On the additional issue it is not necessary to say much. Mr. Dampier never professed by his proceedings to determine the precise limits of the grant; and their Lordships concur with the Judges of both the Courts below in thinking that there is no evidence that Mr. Dampier visited or surveyed the land comprised in the three chucks which was the subject of this suit, (all of which lie to the south of the Khagdoon), or passed, as intended to pass, any order concerning them. Indeed, although the appellant's printed case contains a good deal of matter on this point, little was said at their Lordships' bar concerning this issue. The strength of the argument on both sides was directed to the other, and more material question, whether the three chucks are, in point of fact, within the boundaries defined by the pottah.

It has very properly been admitted by all the Judges who have tried these cases in the Civil Courts that, if those boundaries can be identified, the plaintiffs are entitled to whatever area is contained within them. If the grant was an imprudent one, the present Government of India must bear the burden of its predecessor's imprudence. On the other hand, if it be uncertain on the evidence which of

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two lines was the boundary contemplated by the parties to the instrument, the improbability of a grant of 1,40,000 beegahs at a fixed perpetual rent of 349 sicca rupees may afford an argument for the preference of one line to the other.

The three chucks which are the subject of the first suit form an irregular quadrilateral, of which the actual boundaries are the following :—the northerly boundary is the Khagdoon, between its junction with the Bheeskhally river and the mouth of the Burgoonah Khal, which connects the Khagdoon with the Boorissur; the easterly boundary is partly the last-mentioned Khal and partly the course of the Boorissur river to its mouth; and the westerly boundary is the Bheeskhally, from its junction with the Khagdoon to its mouth. But neither the course of the Boorissur nor that of the Bheeskhally is due north and south; the former river trends somewhat to the west, and the latter to the east. And there is a space between their mouths at which the southerly or south-westerly boundary of the quadrilateral is the sea or the estuary of the Horringhotta, into which both the Boorissur and the Bheeskhally fall.

How, then, is the land thus surrounded to be brought within the boundaries of Aelateerkhallee as defined by the pottah?

The contention of the plaintiffs is this: they say that the northern boundary of Aelateerkhallee, treated as consisting of chucks Nos. 2, 3, 4, 5, 6, and 7, is, as defined by the pottah, the Aeladoon; that the eastern boundary is also the Aela; that the term used by the pottah to define the western boundary, namely, "the ebb of the Bhyong river as far as the Khagdoon," means the ebb of the Bhyong river, through what is marked on the maps as the Khagdoon, and thence through the river Bheeskhally to the sea; and that the southern boundary of the six chucks is the Purwah river mentioned in the pottah as the southern boundary of the Mouzah.

The northern boundary is not in question in this suit. The eastern, as contended for by the plaintiffs, involves this difficulty. The same stream is treated as being in one part of its course the Aela, in another the Boorissur or Purwah. Their Lordships accept, as the Courts below have accepted, the hypothesis that the "Purwah" of the pottah and the Boorissur of the maps are the same. But, although there is no conclusive evidence on either side which shows at what precise spot the Aela becomes the Purwah or Boorissur, it seems clear that the stream ceases to bear the name of Aela long before it reaches any part of the land in dispute in this first suit. And the general course of the Purwah, if not due north and south, is far more in that direction than it is from east to west; and, if it does not form the eastern boundary of the three chucks in dispute, it is impossible to say what that eastern boundary is.

Again, the contention of the plaintiffs as to the western boundary involves still greater difficulties. The admitted boundaries of Phooljhooree show that, at the date of the pottah, the Khagdoon and the Bheeskhally were known as two distinct streams, the latter being a considerable river flowing from north to south, the former flowing first from north to south parallel with the Bheeskhally, and there forming the eastern boundary of Phooljhooree, and afterwards from east to west and so forming the southern boundary of Phooljhooree. If it be said that after their junction the united streams may take the name of the less considerable confluent, the Khagdoon, the answer is that that theory is contradicted by every map of authority from that of Rennell's downwards. Again, if it be conceded, for the sake of argument, though that is a material question to be considered on the second appeal, that the branch of the Khagdoon, which is stated in the pottah to be the eastern boundary of Phooljhooree, is identical with "the river Bhyong as far as the Khagdoon" in the Persian document, or "the ebb of the Bhyong as far as the Khagdoon" in the Bengalee document, by what reasonable construction can either phrase, and especially the first, which is that found in the original pottah, be interpreted to mean the reflux of the Bhyong through the Khagdoon and the Bheeskhally, or through either of them to the sea? The words "as far as" seem to import that the Khagdoon, wherever that name was to be applied to the stream, was the *terminus ad quem*, the point beyond which the western boundary was not to extend. It is, therefore, difficult to see by what construction either the eastern or the western boundary, as laid down in the pottah, can be extended so as to comprehend within Mouzah Aelateerkhallee any portion of the three chucks in dispute in this first suit. The argument, however, of the plaintiffs is this :—the southern boundary is clearly defined to be the river Purwah. We must start from that boundary and proceed to the northern boundary, the Aeladoon. Whatever lies between the two must belong to the Mouzah, and the western and eastern boundaries must be prolonged accordingly. The argument would be more plausible if the river Purwah could be shown to be the complete southern boundary of the disputed lands. But it has been seen that during the greater part of its course it is the easterly rather than the southerly boundary of the land in dispute, and that, although at its mouth it may trend more to the westward and so overlap the southern end of a portion of that land, there is a definite space between the

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mouths of the Purwah and the Bheeskhally, at which the land forming the southern and south-western extremities of the disputed chucks is washed by the estuary of the Horringhotta. That space Mr. Reilly, the Commissioner, somewhere states to be from four to five miles in length, and by measurement on any map laid down to scale it will be seen that his estimate is not greatly beside the mark. It follows, then, that the plaintiffs have failed to identify three out of four of the pottah boundaries, (being the only boundaries which could touch the land in question,) so as to comprehend any portion of chucks Nos. 5, 6, and 7. This consideration would alone suffice to justify the dismissal of the first suit. But it is, of course, desirable to have on the other side some theory which may account for the definition of the southern boundary of the Mouzah as the river Purwah. Their Lordships are unable to suggest any one more plausible than that of Mr. Justice Campbell, which makes the Purwah a partial boundary to the south at the point at which it makes a marked trending to the westward, and at which its existence as such boundary is in some degree consistent with the lateral boundaries. The result is that their Lordships are unable to see any grounds for overruling the concurrent judgment of the two Courts below in the first suit.

They will now proceed to consider the second appeal.

The question touching the three chucks which was reserved for further consideration by Mr. Grote came in the first instance before Mr. Reilly, the then Commissioner of the Soonderbuns. He, in his proceeding of the 6th December 1860, seems to have come to the conclusion that the plaintiffs had not established a title according to the pottah boundaries to any land whatever except that comprised in Mouzah Phooljhooree, their title to which had been recognized by every Government officer who had to do with the case. He, therefore, affirmed the strict right of Government to resume all the three chucks under consideration; but recommended that, inasmuch as the boundaries of one of them corresponded on two sides with the pottah boundaries, that should be released as a matter of favour. The chuck in question is inaccurately described in his judgment as No. 2, and in Mr. Gomes' map is inaccurately laid down as Kewraboonia. It is obvious, however, that the chuck of which Mr. Reilly meant to recommend the release, and which has since been released, is No. 3, or the Aelateerkhallee of Mr. Sturt's map. Mr. Lushington, the Commissioner of the Nuddea Division, by his order of the 10th April 1861 set this mistake right, but in all other respects confirmed Mr. Reilly's order. The final result, therefore, of these proceedings before the Revenue authorities was that chuck No. 3 was released, and that chucks Nos. 2 and 4 were also resumed.

To impeach these proceedings the plaintiffs commenced the regular suit, out of which this second appeal arises, in the Civil Court.

The material issues were, as in the former suit—

1. Are the lands claimed within the limits of the pottah of 1805?

2. Were these chucks resumed under Regulations II of 1819 and III of 1828, and finally released to the plaintiffs?

Both these issues were decided against the plaintiffs, and their suit dismissed with costs by the Zillah Judge, Mr. Buckle, on the 24th December 1863. But his judgment was reversed on appeal, and the plaintiffs' title to the two chucks in question upheld by the High Court on the 20th March 1865. And against this latter decision the second appeal has been preferred.

Upon the second issue the High Court agreed with the Zillah Court, and their Lordships do not dissent from that finding. They think it impossible to say that all the lands in question in this suit were formally released by Mr. Dampier as falling within the pottah boundaries. It does not appear that the greater part of them was ever surveyed by him or under his direction, or that he ever purported to decide what was included in the pottah boundaries. His order of dismissal and release, therefore, cannot operate as a bar to the trial of the first issue, though, as will hereafter be pointed out, the proceedings before him may afford some inferences not immaterial to its determination.

The first issue in this suit raises questions of greater difficulty than those presented by the like issue in the other suit, because it is necessary in this suit to fix affirmatively three boundaries, to the definition whereof contained in the pottah nothing in nature exactly corresponds. It is, in their Lordships' opinion, impossible to evade this difficulty by adopting the extreme view of Mr. Reilly, and saying that, inasmuch as the plaintiffs have failed to identify three of the pottah boundaries of Aelateerkhallee satisfactorily, it must be taken that nothing was effectually granted by the pottah except Mouzah Phooljhooree. The pottah purports to grant both Mouzahs, and the Government cannot be allowed to say that their grant which purports to grant something has in fact granted nothing, if by any reasonable construction it is possible to fix boundaries which shall define the second Mouzah.

What, then, are the boundaries of Mouzah Aelateerkhallee? As to the northern boundary, there is no difficulty. All the maps show that the water which forms that boundary,

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whether it be measured from its junction with that branch of the Khagdoon, which is the admitted western boundary of Pooljhooree, or from the point at which the Kewraboonia Khal leaves it (in other words, whether the Mouzah does or does not include chuck No. 2), may be correctly described as the Aeladoon. That the same stream takes a southerly turn, and, to some extent at least, forms in the strictest sense the eastern boundary of the Mouzah, is also clear. The difficulty as to the eastern boundary is this. It is admitted that at some point of its course (the defendant says at its confluence with the Badoora) the river loses the name of Aela and becomes the Borissur or Purwah, and consequently that, if the eastern boundary be prolonged beyond that point, it will no longer correspond with the pottah boundary.

Their Lordships, however, have to deal with the whole description in the pottah, and they are of opinion that, if they can determine at what point the Purwah can be held to form, as stated by the pottah, wholly or in part the southern boundary, the prolongation of the eastern boundary beyond the point at which the river is in strictness called the Aela becomes a circumstance of comparatively little importance, and one which the laxity with which the names of all these streams are used would suffice to explain. The learned counsel for the defendants were themselves not indisposed to accept Mr. Justice Campbell's theory as to the southern boundary. But they would place the bend of the river from which the southern boundary line is to be drawn nearly opposite to the mouth of the Badoora, the point at which it is said the Aela first becomes the Purwah. To their Lordships it appears that the well-defined trending of the river to the westward, which may reasonably be treated as the southern boundary in the contemplation of the parties, is considerably to the south of that point, and almost at the bottom of chuck No. 4. Again, it is necessary to connect the river Purwah, from the point at which it ceases to form the southern boundary, with the proper western boundary. And this their Lordships think is more reasonably done by taking the Burgonah Khal as the connecting link than by drawing an arbitrary line through the jungle. In the former case, the southern boundary (speaking roughly) of the Mouzah will throughout be the Purwah, or water issuing from, or communicating with, the Purwah. Their Lordships are, therefore, of opinion that the northern, eastern, and southern boundaries, as found by the High Court, may be accepted as the least inconsistent with the language of the pottah that are capable of being assigned. The chief difficulty in the case is that of the western boundary. We have to determine what is meant by "the river Bhyong as far as the Khagdoon," or "the ebb of the Bhyong as far as the Khagdoon." The Bhyong, so far as it has been identified, seems to be another name for the Mirzagunj, a considerable stream which, having probably by its deposits formed, or largely contributed to form, the land in dispute, divides itself at this point of the Delta into at least two branches, a part of its water finding its way westward through the Aeladoon to the Khagdoon, and the other part flowing eastward through the Aeladoon to the Boorissur. The High Court has identified the boundary under consideration with the branch of the Khagdoon, which is admitted to be the eastern boundary of Phooljhooree. The defendant contends that, if this boundary is capable of identification at all, it must be taken to be the Kewraboonia Khal, which, starting from one point of the northern part of the Aela, meets the southern branch of the Khagdoon.

It is impossible to deny that there is very great force in the arguments which have been adduced against the theory of the High Court. It is in the highest degree improbable that the same water should in the same document have been described as "the Khagdoon" and as "the Bhyong," or "ebb of the Bhyong as far as the Khagdoon." But unless this singular laxity of expression is assumed, the Bhyong or its ebb must be held to reach the Khagdoon at the extreme north-western corner of the Mouzah, and, therefore, in no sense to form its western boundary. Again, it seems probable that if the two Mouzahs granted had been known to be conterminous, they would have been so described. Against the theory that the Kewraboonia Khal is the western boundary, the learned Judges of the High Court have assigned various reasons, none of which seem to their Lordships to be conclusive.

If Gomes' map be examined, it will be seen that, starting from the point at which the Burgonah Khal joins the Khagdoon, following the Khagdoon to the mouth of Kewraboonia Khal, and thence following that Khal to its junction with the Aeladoon, we have a boundary line which might be accepted as the western boundary with little more laxity of description than has been admitted in the fixation of the eastern and southern boundaries. If, therefore, the case rested here, their Lordships might be disposed to think that, although neither theory is altogether satisfactory, that of the defendant is the more plausible of the two. They are, however, pressed by this consideration. If this boundary line be adopted, it would, if taken in conection with the other boundaries, give to the plaintiffs chuck No. 4, but it would wholly exclude them from chuck No. 2. It is, however, perfectly clear that Mr. Dampier, by his order of the 19th August 1831, released some part of the Mouzah Aelateerkhallee "as included within the boundaries mentioned in the pottah,"

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being that portion of which he contemplated the resumption by his proceeding of the 12th March 1830. And, looking at the latter proceeding and at Captain Hodges' map, their Lordships are strongly of opinion that Mr. Dampier's investigation and subsequent release probably comprehended the whole northern border of what is now claimed as Mouzah Aelateerkhallee, from the junction of the Aela with the Khagdoon, and certainly comprehended the village or haut which in most of the maps appears as "Aela" on the west of the Kewraboonia Khal. If this be so, there arises a presumption against the theory that the Kewraboonia Khal was the western boundary contemplated by the pottah, which, in their Lordships' judgment, is sufficient to turn the scale in favour of the other theory. And, on the whole, their Lordships have come to the conclusion that, inasmuch as they are unable to assign any boundaries to the Mouzah which will more nearly correspond to the description in the pottah than those found by the High Court, the second decision of that Court ought also to be affirmed.

Something was said at their Lordships' bar touching the hardship which the plaintiffs have sustained by their exclusion from the three southern chucks, upon which it was represented they had expended large sums in reclamation of waste land. Their Lordships have to observe that the only question in issue in these suits was whether the plaintiffs were entitled to hold as against the Government, at a perpetual rent, almost nominal, the large quantity of land which they alleged to be comprehended within the pottah boundaries. That was a question of strict legal right on each side. There is nothing in the present decision which need prevent the Government from taking into consideration in the assessment of revenue upon the resumed chucks whatever equities may arise from such an expenditure as that suggested, or from giving effect to any preferential right to a settlement which may ordinarily be allowed to the persons found in the occupation of such lands. Their Lordships entertain the hope that any claim of that kind which the plaintiffs may prefer will receive full and fair consideration. To such consideration they seem the more entitled, inasmuch as they are not mere squatters or trespassers on the lands; but have held them under a claim of [illegible] which, if not altogether reasonable, cannot be said to have been put forward *malâ* [illegible] and which was made more colourable by [illegible] somewhat intermittent action of the [illegible] authorities during a long period of [illegible]. This question, however, is wholly beside [illegible] which their Lordships have to decide. [illegible] only order which they can recommend [illegible] to make is that both these appeals [illegible] with costs.

OFFICIAL PAPERS.

Revision of Assessment in Salem.

Proceedings of the Madras Government, Revenue Department, 20th May 1868.

Read Proceedings of Board of Revenue, 4th October 1867, No. 6,334:—

Order thereon, 20th May 1868, No. 1,427.

The Government proceed to pass orders on the proposals for the revision of the Salem Land Assessment, which are submitted in the above Proceedings of the Board of Revenue and in the papers that accompany them.

2. The Government deem it unnecessary to analyse minutely the principles on which the re-assessment has been conducted, as these are in conformity with the general instructions prescribed by Government. They will, however, briefly notice the main points of the process followed in this particular district.

3. The first report relates to the Southern taluks or Talghat division. The second to the Baramahal or intermediate tract, and the Balaghat or most northern and elevated tract.

4. In the former the increase in the area discovered by survey averages 12 per cent., and in the latter 16 per cent; the actual increase in the former being 81,594 acres, and in the latter 68,840 acres.

These areas do not include Inam or Poramboke lands.

5. The classified area is 15,08,642 acres, and of this

82 per cent. is red soil.
16 „ is regur.
2 „ is exceptional or permanently improved.

6. The standard crops are—

White Paddy throughout the district.	For wet lands.
Cholum, Cumboo, and Ragi in southern division. Cumboo, Ragi, and Horse Gram in northern division.	For dry lands.

7. The grain values for the different sorts of soil have been determined partly by experiment, but mainly by general inquiry, and by the aid of intelligent ryots and experienced Revenue officers.

At paragraphs 7 and 8 of Mr. Master's two reports there are given tables to shew these values for Salem, in contrast with those adopted for other districts by the department.

8. To cover risk of season, an allowance of 15 per cent. in the southern and 20 per cent. in the northern divisions (this last rate corresponding with that allowed in Trichinopoly) has been made from the estimated gross produce of dry lands.

No similar allowance is proposed for wet lands, the grouping of villages with reference to the character of the irrigation, and their consequent rating at, or above, or below, the standard rates of assessment, being held to be sufficient to cover this risk.

9. The commutation rates are deduced from the whole series of available Price Lists, ranging from Fusly 1231 (A. D. 1821-22) to Fusly 1274 (A. D. 1864-65), a period of forty-three years.

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The averages are shewn below according to the district records, the Board's records, and the proposals of Messrs. Puckle and Thomas (who commenced the revision).

The rates that were adopted in the case of the adjoining district of Trichinopoly are also noted:—

Per "Harris Cullum."

In ryots' selling months, February and March.	Paddy.	Ragi.	Cumboo.	Cholum.	Gram.
Southern Taluks, Annas.	13	14	15	16	0
Northern do. „	11	11	11	0	14
According to Lists in Board's records, dated Fusly 1218 to Fusly 1274	$12\frac{1}{3}$	$12\frac{1}{8}$	$12\frac{1}{2}$	$13\frac{5}{6}$	0
Mr. Puckle's rate for all grains after deducting allowance for cartage and brokerage.	For all grains. Annas.				
Southern Taluks ...	10				
Northern do. ...	9				
	Paddy.	Dry grains.			
Mr. Thomas's rate for the whole district ...	9	10			
Rates adopted in Trichinopoly...	8	10	10	12	0

10. The cultivation expenses calculated in the usual manner come out—

		Rs.	A.	P.
Southern Taluks...	Wet land, Rupees	9	4	0
	Dry land, „	4	12	0
Northern do. ...	Wet land, „	9	0	0
	Dry land, „	3	12	0

per acre of good soil, well cultivated, the expenditure being proportionately reduced on the inferior soils.

11. The straw is said to pay all the costs of ploughing, instead of only the cattle's keep, as generally allowed.

12. An allowance of 10 per cent. is made out of the money value of half the net produce on account of "unprofitable areas" included in the Survey fields, as hedges, banks, rocks, &c.

This allowance is usual, and Mr. Puckle says it is specially necessary in Salem District, and is no more than the actual necessities of the case require.

13. The standard money rates of assessment arrived at by the above detailed process approximate as nearly as possible to a moiety of the net produce.

14. They are modified by the grouping of the villages with reference to the character of the irrigation in the wet lands, and to the relative advantages of climate, situation, proximity to markets, &c., in the case of the dry lands.

15. Four groups have been formed for wet lands in the Southern taluks, and the same number for the Northern, the first of the latter corresponding with the second of the former, which second group is assessed at the standard rates, which are raised for the first group and lowered for the third, fourth, and fifth.

16. Three groups have been formed for the dry lands, of which the first bears the standard rates.

17. The ultimately resulting merged money rates per acre are shewn below:—

Northern Taluks. Taram. No.	Dry. Rs.	Dry. A.	Dry. P.	Wet. Rs.	Wet. A.	Wet. P.
1	3	8	0	8	0	0
2	2	8	0	7	0	0
3	2	0	0	6	0	0
4	1	8	0	5	0	0
5	1	4	0	4	0	0
6	1	0	0	3	0	0
7	0	12	0	2	8	0
8	0	8	0	2	0	0
9	0	6	0	1	8	0
10	0	5	0	1	4	0
11	0	4	0	1	0	0

Southern Taluks. Taram. No.	Dry. Rs.	Dry. A.	Dry. P.	Wet. Rs.	Wet. A.	Wet. P.
1	4	8	0	9	0	0
2	3	8	0	8	0	0
3	2	8	0	7	0	0
4	2	0	0	6	0	0
5	1	8	0	5	0	0
6	1	4	0	4	0	0
7	1	0	0	3	0	0
8	0	12	0	2	8	0
9	0	8	0	2	0	0
10	0	6	0	1	8	0
11	0	4	0	1	0	0

Occupied Areas under each rate in Fusly 1274.

Dry Land. Rate. Rs. A. P.	Extent. Acres.	Assessment. Rs.	Percentage.	Wet Land. Rate. Rs. A. P.	Extent. Acres.	Assessment. Rs.	Percentage.
4 8 0	1,811	8,150	...	9 0 0	336	3,024	...
3 8 0	6,247	21,863	1	8 0 0	652	5,216	1
2 8 0	9,659	24,147	1	7 0 0	2,597	18,176	3
2 0 0	22,885	45,768	3	6 0 0	7,692	46,155	9
1 8 0	93,236	1,39,855	10	5 0 0	17,787	88,939	21
1 4 0	1,94,502	2,43,127	20	4 0 0	27,385	1,09,540	33
1 0 0	2,60,201	2,60,201	27	3 0 0	19,213	57,640	23
0 12 0	1,74,041	1,30,530	18	2 8 0	3,360	8,397	4
0 8 0	80,197	40,999	8	2 0 0	996	1,991	1
0 6 0	65,149	24,431	7	1 8 0	511	765	1
0 5 0	200	63	0	1 4 0	3,489	4,362	4
0 4 0	48,660	12,163	5	1 0 0	61	61	0
Total...	9,56,788	9,50,397	100	Total...	84,079	3,44,266	100

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		Extent.	Assessment.
		Acres.	RS.
Dry land	...	9,56,788	9,50,397
Wet do.	...	84,079	3,44,266
		10,40,867	12,94,663

18. The *unoccupied* but classified and rated area measures 4,67,775 acres, assessed at Rupees 2,98,468, which may be considered the margin for future extension of revenue.

Mr. Puckle's proposals.

	RS.
Single crop assessment on area classified in Fusly 1270	12,94,663
Do. on extension of cultivation to Fusly 1274	80,449
Total...	13,75,112
Add—village cess on above, at 6¼ per cent.	85,944
Second crop assessment, estimated. ...	45,449
Grand Total...	15,06,505
Deduct deficiency in village cess ...	18,890
Net result...	14,87,615
Net settlement of Fusly 1274	16,01,628
Mr. Puckle's net results	14,87,615
Difference...	1,14,013

19. The ultimate results of Mr. Puckle's proposals are differently stated by himself at paragraph 40 of his letter dated 13th April 1866, by Mr. Master at paragraph 28 of his letter dated 29th August 1866, and by the Board at paragraph 11 of their Proceedings above recorded, and none of the calculations appear to be quite accurate according to the *data* used.

20. The following appears to Government to represent the effect of the proposals as compared with the Settlement of Fusly 1274 :—

	RS.
Actual settlement of Fusly 1274 ...	17,06,462
Deduct payments out of collections to village servants	1,04,834
Net settlement	16,01,628
Mr. Puckle's do.	15,06,505
Difference...	95,123
Add deficiency of village cess to meet village charges	18,890
	1,14,013

21. Thus, had Mr. Puckle's proposals been applied at the ordinary settlement of Fusly 1274, there would have been a reduction of Rupees 1,14,013 out of the net Settlement actually made, namely, Rupees 16,01,628, or 7 per cent.

22. The deficiency, as calculated above, is considerably less than what is shewn by Messrs. Puckle or Master or by the Board, but it still appears to Government to be an unnecessary sacrifice out of a revenue demand which is avowedly paid with ease, although it may include many inequalities.

23. It may safely be assumed that the percentage of loss represents sufficiently accurately what would be the effect at the present time of carrying out the revision of the assessment on the proposed rates, and Messrs. Puckle and Master, recognizing the fact that the existing demand is met with ease in ordinary seasons, and that on a general view relief cannot be said to be needed, recommend that the revision be left in abeyance.

24. The Board are opposed to any postponement, and the Government agree with them in thinking that it would be most unwise to abandon the results of the labour and inquiry that have been devoted to the survey and revision of the assessment, and so to lose the opportunity for settling the Government demand on a more discriminating and equitable basis than it at present occupies.

25. But while resolving to avail themselves of the full and valuable information that has been collected to ensure a more fair distribution of the Government demand on the land, the Government see no reason why they should accept the whole of Mr. Puckle's proposals, involving, as they do, a considerable sacrifice of public revenue which at present is paid with perfect ease.

26. The demands on the Government for the improvements of the public establishments, for State education, for sanitary and social improvements, for reproductive public works, and generally for aid to the development of the country and its advance on the path of progress, preclude the Government in the interest of the community from relinquishing any portion of the existing revenues which can fairly be retained.

27. The key to the financial results of the proposed revision is, of course, the commutation rate adopted for the conversion of the Government share of the produce into money, and this, as above pointed out, has been deduced from the Price Lists for a period of forty-three years, from A. D. 1821-22 to 1864-65, the effect being to lower the average materially by the inclusion of the prices prevailing in the earlier years of the series at rates far below those to which they are at all likely again to fall. The great development of trade, and the impetus given to prices by the extensive gold discoveries of the last twenty years, have produced effects, which there is no reason to suppose will be other than permanent, and under these circumstances it appears to Government unreasonable to base the commutation of the public demand on the land in any degree on facts deduced from a state of things which it is not at all probable will ever recur.

28. Holding these views, the Government called on the Officiating Director of Revenue Settlement for certain information to enable them to test the effect of basing the commutation rate on the returns for a shorter and more recent series of years, and an inspection of the statements furnished by him have confirmed them in their opinion that in the proposals submitted to them the commutation rate for the Government demand has been unduly lowered.

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29. Mr. Puckle has adopted two scales, for the Northern and Southern taluks respectively, and taking the higher of these rates and comparing it with the Price List for February and March (the Ryots' selling months) from Fusly 1245 to 1276, it is found that, as regards the four kinds of dry grain for which details are given, viz., Cholum, Cumboo, Ragi, and Horse Gram, the price has only in two instances out of ninety-six (viz., Cumboo in February, and Ragi in March, Fusly 1266) receded to a level with the proposed rate during the twelve years from Fusly 1265 to Fusly 1276, and that, as regards Paddy, there are also only two cases out of forty-eight (viz., second sort Paddy in February and March, Fusly 1266) in which it similarly receded, while the average of the twenty years, from Fusly 1255 to 1274, which excludes the two years 1865-66 and 1866-67, in which prices may be said to have risen to famine rates, gives the following result:—

	Mr. Puckle's average price per Garce. For 44 years, from Fusly 1231 *to* 1274.	*Average for* 20 *years, from Fusly* 1255 *to* 1274.
South Taluks...	Dry ... Rs. 120 Wet ... „ 111	Dry ... Rs. 137
North Taluks...	Dry ... „ 100 Wet ... „ 93	Wet ... „ 123

30. Applying in detail the rates adjusted at the twenty years' average of prices, the following result is obtained:—

	RS.
Actual settlement of Fusly 1274 ...	17,06,462
Deduct payment by Government to village servants	1,04,834
Net Settlement...	16,01,628 A
Assessment on area classed in Fusly 1270 at rates based on 20 years' average for first crop	14,24,116
Village Service Cess, at 6¼ per cent. on do.	89,007
Assessment on estimated extension of cultivation to Fusly 1274 at rates as above	93,007
Village Service Cess on do.	5,815
Second-crop charge as calculated by Mr. Puckle	45,450
Total...	16,57,437
Deduct payment to village servants...	1,04,834
Net Settlement...	15,52,603 B
Difference between A and B	49,025

31. Thus, by adopting the average of twenty years from A. D. 1845-46 to 1864-65 inclusive, the results of the survey and revision of Settlement might be secured with a sacrifice of less than half a lac of rupees instead of Rupees 1,14,013 out of former revenue, or more exactly Rupees 49,025 out of Rupees 16,01,628, being about three instead of seven per cent.

32. The Government are willing to accept this loss of three per cent. of existing land revenue as the price of securing for the district the benefit of the expensive operations which have been carried out there, and the Board of Revenue will be requested to report, after communication with the Director of Revenue Settlement, whether they see any objection to the proposed modification, and to the adoption of the same series of years in fixing the commutation rate for the purposes of the revision in any other district which may be taken in hand. They will also submit their opinion as to the practicability of applying the proposal to any district in which the revision has been already carried out, as it is evident that the use of different series of years in different districts is fatal to the attainment of that relative equality of taxation, which it was one of the main objects of the revision to secure as nearly as possible.

33. The Government concur in opinion with the Board of Revenue that it is eminently desirable to commute the liability to perform customary labour on irrigation works into a money payment throughout the Presidency. The arrangement has been suggested on more than one occasion, and every year adds strength to the arguments in favour of it. The works are deteriorating, the difficulty of enforcing the customary liability is increasing, and the improved and improving state of the market for produce renders a money cess a far lighter burden on the holder of irrigated land than the demand for labour imposes.

34. It appears to the Government desirable to take powers by an Act to impose a cess for this purpose on all holders of land irrigated from a Government source at a rate not exceeding a fixed per-centage on the assessment on the land, and they desire that the Board will take the matter in hand at once, and, after communication with the several Collectors and with the Director of Revenue Settlement, submit a draft of an Act to attain the object in view, with their remarks as to the rate to be adopted and the probable financial result of the measure.

NOTE.—Paragraph 2 of Board's Proceedings, No. 4,540, dated 18th July 1867, shews that the subject has already engaged their attention.

35. In connection with the question of the Salem revision, the Government have had under consideration the advisability of restoring the Department of Revenue Settlement to the position in regard to the general revision of the land assessment which it occupied prior to the passing of the orders of 12th December 1864, No. 2,243, resolving to entrust the duty to the Collectors of the districts concerned, except, in a few specified cases.

36. The experience which the Government have had of the working of this altered system has been very unsatisfactory, and convinces them that the retention of the special department for the performance of this special duty is the only method by which to ensure celerity and efficiency in its discharge, consistency and uniformity in the details of the re-assessment, and a fair measure of relative equality in the resulting taxation, as well as to save the country from the neglect which must occur if the Collector and subordinate Revenue officers are withdrawn from their ordinary duties and employed on this intricate, laborious, and absorbing task.

37. In accordance with these views the Government have resolved to re-assign to the Director of Revenue Settlement the supervision of the re-assessment of the land revenue in all those districts which have yet to be undertaken, except Tinnevelly, the revision of which district has already been for

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some time in hand under a specially qualified officer in the Collector, Mr. Puckle.

38. The Government have already gazetted Mr. Master to the confirmed post of Director of Revenue Settlement, and they now authorize him to draw pay at the rate of Rupees 2,750 monthly, from the date on which he was so gazetted.

39. The full rate of pay (Rupees 3,016-10-8) sanctioned by the Supreme Government for the appointment was fixed with reference to the probability of securing for the duty the services of one of the then members of the Board of Revenue, and the Government consider that the reduced rate now adopted affords sufficient remuneration for the duties, onerous and responsible though they be, and will enable the Government at all times to select a duly qualified officer for the post from the higher ranks of the service.

40. The Government desire that Mr. Master will consider and report what arrangements it is desirable to make for re-establishing the department on an effective footing for the performance of the duty now delegated to it. It is observed that it at present includes no member of the Covenanted service except the Director.

41. One important point connected with the revision of the assessment is the duration of the money settlement imposed in accordance with it, and on this subject there appears to be considerable uncertainty and difference of opinion.

42. It is a matter which there ought to be no room for doubt, and the Government accordingly resolve to bring the point under the consideration of the Secretary of State, in view to its early and final decision.

(Signed) W. HUDLESTON,
Secretary to Government.

REVENUE DEPARTMENT.

No. 6.

To the Right Honorable
the Secretary of State for India.

Right Honorable Sir,

We have recently had under consideration the proposals of the Director of Revenue Settlement and Board of Revenue for the revision of the assessment of the Salem District.

2. A copy of our Proceedings on the subject is enclosed. You will observe from these Proceedings that while we have deemed it necessary to refer the papers back to the Board of Revenue for their opinion on a point of detail, two important questions connected with the duration of the revised assessment now being carried out have been raised, and on these points we think it right to apply to you for further orders.

Proceedings of Government,
20th May 1868, Nos. 502—509.
„ 26th „ „ „ 588, 589.
„ 8th July „ „ 143A, 143B.

3. In the Minutes of Consultation, No. 951, dated 14th August 1855, discussing the proposals for a general Revenue Survey and Settlement of the Madras Presidency, the Government of the day expressed their opinion (paragraph 23) that it was undesirable that the *grain* assessments should be fixed in perpetuity, but that they should be declared unalterable for a period of 50 years.

4. At paragraph 21 of the same Proceedings, the Government proposed that the commuted money rates should vary with the rateable money value of the standard crop, but that, as frequent changes would be inexpedient, the prices should be fixed every seven or ten years on the average of the same period, and that the commutation rate so determined should remain unchanged for a term of the same length.

5. The Honorable Court of Directors, in their Despatch, No. 17, of 1856, dated 17th December, observe on this point at paragraph 22, "We entertain great doubt of the expediency of these proceedings. We think that the rates as we propose them to be assessed should be sufficiently moderate to allow for all ordinary fluctuation in the prices of grain, and that all needlessly frequent alterations in the amount of the ryots' payments should be avoided. The grain assessment having been determined and converted into money at a fair and moderate rate, we should perfer that the assessment so fixed should be declared unalterable for a term of thirty years, (as in Bombay and the North-Western Provinces,) at the expiration of which period *both the amount of the grain assessment and the rate of its conversion into money* would be subject to re-adjustment, according to existing circumstances."

6. On receipt of the Court's Despatch, this among other moot points was referred for the opinion of the Board of Revenue, who at paragraph 12 of their Proceedings, dated 15th July 1857, urged the adoption of the plan approved by the Court, and that the assessment when once fixed should be unalterable for thirty years. They again briefly alluded to the subject in paragraph 40 of their Proceedings, dated 19th November 1857, No. 4,044, observing that, when revision took place, the Government will, of course, be prepared to raise as well as decrease the assessment, in disposing of which Proceedings, the Government in paragraph 23, Extract Minutes of Consultation, No. 191, dated 15th February 1858, stated their opinion that it would be unwise to fix any definite periods for a review of the commutation rate, and observed that the question was one of vital importance to the land-owners, and should at all times engage the most careful attention of the Board. At paragraph 38 of the same Minutes of Consultation they desired that it should be distinctly notified that the assessment will be revised after fifty years, if then deemed expedient. It does not appear that any notification to this effect has ever yet been made.

7. These papers were in ordinary course transmitted to the Secretary of State, and acknowledged in his Despatch, No. 5, dated 15th December 1858, at paragraph 18 of which Lord Stanley stated his opinion on the question of periodical revisions to be "that frequent changes in the commutation price, and consequently in the money rate of assessment, should be avoided, and that if the demand is fixed on a basis sufficiently moderate to allow for ordinary fluctuations in price * * *, the time of settlement should be, as in Bombay, 30 years."

8. Here the discussion for the time terminated, and it should be noted that up to this stage the necessity of periodical revisions of the commutation price for the Government assessment in grain had been urged mainly with reference to the probability that a fall in prices might render the money rates oppressively high, although the possibility of a rise in price was also contemplated.

9. The question of the duration of the settlement of the Land Revenue demand was again

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brought under consideration in October 1861, when the Supreme Government forwarded copy of Colonel Baird Smith's final report on the Famine in Bengal, and requested the opinion of this Government as to the advantages of a permanent settlement for this Presidency, or as to the expediency of securing legislative sanction for settlements for terms of years.

10. Minutes were recorded on the subject by Sir W. Denison and the Hon'ble Messrs. Maltby and Morehead, for which we beg leave to refer you to the Proceedings of this Government, dated 8th Feb. 1862, No. 210; and in replying to the Supreme Government it was stated, in accordance with the views of the majority of the Government, that from an early date and for many years the Ryotwari Settlement had been expressly recognized as *permanent* in its nature, but that the orders above quoted on the subject of the revision of the assessment had left open the question of periodical revisions of the commutation rate.

NOTE.—Sir W. Denison was favourable to the imposition of a permanent grain rent, securing to Government the power of periodically determining the money value of such rent.
Messrs. Maltby and Morehead supported the principle of a permanent money assessment.

11. The Government expressed their decided objection to any extension of the Zemindari system of permanent settlement, which alienates from the State all waste land as a source of future additional revenue, and they saw no advantage in the proposed legislative sanction for settlements, for terms of years, which might hamper the Government without improving the condition of the ryot.

12. The subject of a permanent settlement was again brought under discussion by Sir C. Wood's Despatch of 9th July 1862, No. 14, to the Government of India, paragraphs 41 to 74.

13. It is therein observed that circumstances have a tendency to increase *the extent of cultivation* and the *value* of the wet *produce*, and that the Government may rightly claim to participate in those advantages which accrue from the general progress of society. The arguments in favour of a permanent settlement (defined as "the State fixing once and for ever the demand on the produce of the land, and foregoing all prospect of any future increase from that source,") based on considerations of the security and encouragement it would afford for the improvement of landed property, and of the closer link it would create between the Government and the people, and, on the other hand, those against the measure, as limiting the resources of Government from which to meet the constantly increasing demands for larger expenditure incident to improvements in the administration of the Government of the country, were stated and balanced, and the opinion of Her Majesty's Government was finally expressed that when "a full, fair, and equable rent" has been imposed on all lands now under temporary settlement, then "a permanent settlement may be safely applied" as "a measure dictated by sound policy and calculated to accelerate the development of the resources of India, and to ensure in the highest degree the welfare and contentment of Her Majesty's subjects in that country."

14. In regard to this Presidency in particular, it was remarked that the existing state of things might probably not admit of "a permanent settlement of the land revenue on the assessed lands at the existing rates," but that "as districts are gradually brought under the revised assessment, and when there is reason to believe that the land revenue has not only reached its probable limit but that it is equitably distributed over the lands affected by it, this restriction will no longer be needed." The ultimate conclusion was announced in paragraph 72, that "as regards all districts or parts of districts in which no considerable increase is to be expected in the land revenue, and where its equitable apportionment has already been, or may hereafter be, ascertained," there Her Majesty's Government will be ready to sanction "the settlement in perpetuity of the *assessment* at the present or the revised rates," on the recommendation of the Local and Supreme Governments.

15. With reference to this Despatch, the Supreme Government requested to be informed by this Government how far "the important measure of a permanent settlement of the land revenue" was applicable to this Presidency, and the question was referred to the Board of Revenue for report, but up to this time no reply has been received.

16. We confess we are not surprised at this hesitation, as it appears to us that a certain amount of ambiguity pervades the despatch of the Home Government, when it is attempted to apply its arguments and instructions to the state of things that exists here. There appears to us to be a want of distinction between the permanent settlement of the rates of assessment on particular areas under a "Field Settlement" system, and the permanent settlement of the land revenue from a village or estate or a number of villages or estates, which is fatal to a satisfactory reply to the question of the Supreme Government, inasmuch as the one allows and the other precludes future increase of revenue from extension of cultivation over the waste lands.

17. The definition of a permanent settlement, at paragraph 43 of the despatch, is not conclusive, for the words "the land" and "the source" may mean either a field, or an estate, or a village, or a taluk, or a district. The arguments for and against a permanent settlement may be indifferently applied to either view of the case, and with like force in kind, though perhaps not in degree. Sir T. Munro's recorded opinion, which is cited in support of the course adopted, certainly contemplated permanent rates of field assessment, and no relinquishment of the rights of Government in the waste. And in the passages above quoted, from paragraphs 50, 69, and 72 of the despatch, there is more than enough that is doubtful in the expression to warrant hesitation as to the applicability of the proposals of the Home Government to this Presidency.

18. We will first assume that it was intended to limit absolutely the maximum amount of the Government Land Revenue in this Presidency when certain specified conditions shall have been fulfilled, and in this case we have no hesitation in expressing our concurrence in the opinions already recorded by this Government on previous occasions that the time has not arrived, and is probably still very distant, when any such measure could be adopted without serious injury to the

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interests of the community and of the State as representing the community, or with any real benefit to small sections of the community or to individuals. The demands on the resources of the Government on account of improved administration are constantly increasing, and are likely to increase for a considerable period at a very rapid rate, and the improvement of the Government revenue from the extension of cultivation over the large area of culturable waste is one of the most valuable and legitimate sources of supply to meet those demands to which the Government can look, and on which they may confidently rely, and we are of opinion that the Government would not be warranted in relinquishing any such means for aiding the development of the country, or meeting those claims for most necessary improvements which are loudly demanded in almost every department. Irrigation works, Sanitary measures, Communications, Education, Jails, and many other branches of the administration will, for some time to come, tax to the utmost the resources of the State to effect the amelioration which they require, and demand not only that no legitimate source of additional revenue shall be relinquished, but that all shall be improved to the utmost.

19. Then, as regards small sections of the community or individuals, we are of opinion that the absolute free relinquishment to village communities of any extent of waste beyond what is sufficient for common purposes, would be by no means a boon of unmixed advantage. It would unquestionably lead to much dissension.

20. The distribution of the land is not at all likely to be so carried out as to leave no cause for just complaint. The ultimate occupants would certainly have to pay to private individuals at least as much as would ordinarily be paid to Government, and, at the best, the result could only be that the few would gain what the general community would lose.

21. But we observe that in Sir S. Northcote's Despatch of 23rd March 1867 to the Government of India, it is directed "that no permanent settlement shall be concluded for any estate to which canal irrigation is, in the opinion of the Governor-General in Council, likely to be extended within the next twenty years, and the existing assets of which would thereby be increased in the proportion of 20 per cent.," and we desire to know whether this rule is to be deemed applicable to the Madras Presidency.

22. The course which, under the orders of the Secretary of State, has been followed in this Presidency in dealing with lands irrigated from the canals which have been recently constructed, has been to levy, in addition to the assessment imposed upon the land with reference to its productive qualities irrespective of irrigation, such a water-rate as is deemed sufficient to yield a fair rate of interest on the capital expended in the construction of the works.

23. Hitherto it has not been contemplated to demand from the landholders obtaining water from such works any addition to what may be designated the *dry* assessment on the land beyond the price of the water, and we consider that this is the policy to which the Government ought to adhere.

24. But as it is apparently inconsistent with the rule above quoted, it seems desirable that we should obtain some more definite and express instructions on the subject.

25. We proceed to consider the question of "the settlement in perpetuity of the *assessment* at the present or the revised rates," which is expressly contemplated in the same paragraph, with reference to the case of the Ryotwari system prevailing in this Presidency, under which the settlement of the Government demand is made with individual cultivators, and is based on field assessments.

26. We admit that the right of Government to a revenue from land in this country is limited by immemorial custom, and is indeed solely derived from ancient authorities, which prescribe for the State a specified share in the produce of all cultivated land; and we see no reason to doubt that by the principles enunciated for the guidance of those engaged in the revision of the assessment, the share assumed for Government is everywhere kept within that limit.

27. Such being the case, we are unanimously of opinion that no objections bar, and that it would be advantageous to make, a declaration to the landholders that the grain assessments on the land are permanent.

28. But we are not prepared to make a like recommendation in regard to the money rates, regarding which it appears to us that the ryot has no just claim to a monopoly of the advantages accruing from a rise in prices consequent on circumstances over which he has no control, and the changes in which he in no wise influences, while the Government would certainly at no time be able to resist the claim for remission based on any material and sustained fall in prices.

29. The permanency of the Ryotwari settlement which has undoubtedly been asserted on several occasions, and which has been repeatedly insisted on of late years, has unquestionably hitherto been entirely one-sided. The Government have not raised their demand with reference to improved prices for produce, but they constantly make large remissions with reference to temporary unfavourable conditions of season, and they have repeatedly made liberal reductions in the rates of assessment, when these rates were shown to their satisfaction to be oppressively high and repressive of enterprise.

30. We attach great importance to the principle of moderation in fixing the commutation rate. We fully recognize the good policy of relieving the land from all oppressive burdens, and of aiding the landholder in exceptional seasons. But we consider that there should be a certain measure of reciprocity, and that the State should not be excluded from all share in advantages derived by the landholder from the improvement in prices to which, as cultivator, he contributes nothing.

31. The increase in the value of agricultural produce is the effect of an improvement in domestic and foreign markets, over which the ryot has no control, or is owing to the more extended discovery and depreciation of the precious metals, in which he has no part. To give him the *whole* benefit of the expanding value of his commodity, would simply be to reward him for the merits and exertions of others, or for the accidents of the period in which we live.

32. We do not desire to decry the advantage of permanency in a settlement with the land-

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holders, as tending to encourage them to improve their properties, and giving them a feeling of security, which is valuable in its political effect; but we conceive that these results will be in great measure equally attained by declaring the permanency of the grain assessments, and by giving such an assurance of stability in the settlement of the money rates as shall enable the present generation to regard it as possessing for them all the practical advantages of a settlement in perpetuity.

33. We might enlarge upon the subject, but this communication has already run to considerable length, and we have probably said enough to indicate the grounds of our opinions.

34. We, therefore, submit the subject for your decision, with the expression of our opinion that under the revision of the Land-tax now being carried out in this Presidency, the grain assessments should be declared permanent, but that the money rates should be declared unchangeable only for a period of 30 years, and liable to revision at the end of that time with reference to the prices then prevailing and if the Government of the day should then think fit.

We have the honour to be,
Right Honourable Sir,
Your most obedient, humble servants,

FORT ST. GEORGE,
8th July 1868.

Read the following Despatch from the Right Honourable the Secretary of State for India, (Revenue,) to His Excellency the Right Honourable the Governor in Council, Fort Saint George, dated India Office, London, 8th April 1869, No. 7.

I have had under my consideration in Council the despatch from your Excellency in Council, dated the 8th of July in last year, in which you forwarded your Proceedings on the proposals of the Director of Revenue Settlement and the Board of Revenue for the revision of the assessment of the Salem District. You state that, although you have decided some of the main points of the settlement, you have referred it back to the Board on a point of detail, and take the opportunity of applying for instructions on two points connected with the duration of the settlement.

2. I have perused these important papers with interest, and have to signify my approval of the view which you have adopted of the fairness of commuting the grain-rates into money on the average prices of the last twenty years, instead of those of the larger period of forty-four years, as proposed by Mr. Puckle.

3. I concur with the opinion of your Government that it is "eminently desirable" to commute the liability to perform customary labour on works of irrigation into a money-payment throughout the Presidency; and I admit the necessity of restoring the organization of the establishments for the Revenue Settlement as a separate department.

4. The questions which you have referred for decision are—

I. Whether the rule in Secretary Sir Stafford Northcote's Despatch to the Government of India of the 23rd of March 1867, "that no "permanent settlement shall be concluded for any "estate to which canal irrigation is, in the "opinion of the Governor-General in Council, "likely to be extended within the next twenty "years, and the existing assets of which would "thereby be increased in the proportion of twenty "per cent.," is to be deemed applicable to your Presidency? And

Paragraph 21.

II. Whether, with respect to the despatch of Secretary Sir Charles Wood of the 9th of July 1862 to the Government of India, the grain assessments under the revision of the Land-tax now in progress may not be declared to be permanent, and the money rates changed, if thought advisable by the Government of the day, every thirty years?

Paragraphs 25 to 34.

5. I will consider this last proposal first. I find that since 1856, the question of declaring the grain assessments permanent has frequently been referred for the decision of the authorities in this country, and it has been decided, both by the Court of Directors and by the Secretaries of State, that the settlement should be a money-assessment founded upon due consideration of all the circumstances of the district, and revised after a term of years, and that your Government, so far back as 1858, directed the issue of a Notification to this effect. Her Majesty's Government must adhere to that decision, nor do they see, as your Excellency in Council seems to do, in the despatches addressed to the Government of India, in and from 1862 to the present time on the general question of permanent settlement throughout India, anything inconsistent with this view. It seems to me impossible to read paragraphs 66, 67, 69, and 70 of the despatch of the 9th of July 1862, some of which are quoted by your Government, without being impressed with the conviction that it was thought highly improbable that either your Presidency or that of Bombay, but particularly the former, should be brought, or at all events not for many years to come, within the terms under which alone it was permissible to confer a permanent settlement upon the land-owners. Your Excellency in Council distinctly states, in the despatch now before me, that "the time is probably still very distant when any measure limiting the maximum amount of the Government revenue," under the conditions laid down, "could be adopted "without serious injury to the interests of the "community, and of the State as representing the "community, or with any real benefit to small "sections of the community or to individuals," and it certainly is not the desire of Her Majesty's Government to force on any immature concession of this nature. They concur with you in the expediency, and, indeed, the necessity, of keeping in the hands of the Government such a legitimate source from which to supply the increasing wants of the State for the benefit of the people, as the extension of cultivation among waste lands. They are also happy to agree with your Government in opinion that, under the principles of the revised settlement now in progress for adjusting the assessment and fixing it for a term of years, the share taken by the Government is kept within limits which are perfectly equitable to the cultivator. But they are unable to see that it is, therefore, necessary to make a declaration to the landholders that

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the grain assessments are to be permanent. On the contrary, they feel themselves precluded, for the same reasons which your Excellency in Council has urged in your 18th paragraph for retaining the waste lands, from sanctioning the surrender of such a legitimate source of revenue as the Government share of the increased value which has been conferred on the land by improved administration, the construction of public works, especially works of irrigation and railways, together with the improved price of agricultural produce.

6. On the same principles, there will be no objection to your applying to your Presidency the rule laid down in Sir Stafford Northcote's despatch of the 23rd of March 1867, to which you refer, should the conditions be found fulfilled at any of the stated periods for revising the settlement. Her Majesty's Government do not intend by this to depart from the instruction repeatedly issued by former Secretaries of State, that the assessment should be kept (whenever it can be so kept) wholly distinct from the sum paid for the use of water supplied for irrigation. But this again is not inconsistent with the Government, on the revision of the assessment at the expiration of the term for which it was made, receiving their due share of the improvement in the value of the land which has arisen from water having been brought within reach of it for irrigational purposes, a circumstance which is quite distinct from the sum paid by the cultivator for the use of the water.

7. I have, therefore, to inform you that, if the conditions are fulfilled, the rule laid down by my predecessor may be applied to the Madras Presidency, and to direct that the previous decisions of the Home authorities, by which the assessments were to be revised after a period of thirty years, be adhered to. And, with reference to the observation at the close of the 6th paragraph of your despatch, no time should be lost in making known this determination to the people.

REVENUE DEPARTMENT.

No. 7.

To the Right Honourable
the Secretary of State for India.

My Lord Duke,

We have the honour to acknowledge the receipt of your Grace's despatch of the 8th April 1869, No. 7, in which you approve of our proceedings on the revision of the settlement in the Salem District; but as regards the general question raised by us of declaring permanent the grain-values arrived at during the present revision of assessment in this Presidency, you adhere to the adverse instructions already issued.

2. We would respectfully solicit a re-consideration of your decision on the latter point on the following grounds:—The proposal advocated by this Government, while securing many of the acknowledged advantages of a permanent money-assessment, will be free from the principal objections to that measure. The political advantage of giving the occupiers of Government land a direct interest in the stability of our rule, by declaring that the actual quantity of the crop now taken by Government will never be increased, is considerable. Still greater would be the social advantage of providing a really popular and safe investment for the daily increasing wealth of the country, and though, under the existing system, the desire to become the possessor of land, which is very general among all classes, has had, and will have, the effect of inducing the investment of a certain amount of capital in its purchase, still it is difficult to believe that any large amount will ever be devoted to the *improvement* of land, so long as it is apprehended that after every period of thirty years, the increased value which the land has attained by private outlay of this description will be investigated, and the State demand upon it proportionably augmented. The heavy charge involved in a revision of the assessment every thirty years would also be obviated, as the expensive part of the process lies in the classification and investigation of the different soils, while the mere adjustment of the commutation rate, which would be all that would be required were our proposals adopted, could be effected without any special establishment or prolonged local inquiries.

3. Again, the main argument against a permanent settlement of the land revenue, *viz.*, that the State would be thus cut off from all participation in an expanding source of revenue, although the expenses of administration are unavoidably progressive, falls to the ground, if the permanency of the settlement be limited to the grain values. The State would, under the system recommended, still profit by all extensions of cultivation, and would share, with the occupiers of land, the increased value given to the land by that natural rise in prices which is usually attendant upon augmented local consumption, larger exports, and greater abundance of the circulating medium.

4. With advertence to the concluding sentence in paragraph 5 of your despatch, we submit that, however cogent the objections offered may be to a permanent money assessment, they can hardly be said to apply, with equal force, to our proposal, inasmuch as the Government share of the increased value which will be conferred upon land by improved administration, the construction of public works, etc., must almost invariably take the form of a higher price for the produce of the land. We consequently venture to question the policy of foregoing the general advantages attendant upon the measure proposed by us, for the doubtful and partial gain which might be obtained by a re-valuation every thirty years of the lands to which water has been newly applied, as alluded to in paragraph 6 of your despatch.

5. We take this opportunity of forwarding, for your Grace's information, copies of our orders noted in the margin the one transmitting your despatch under reference to the Board of Revenue, with the necessary instructions; and the other directing the introduction of the revised assessment into the Salem District, on the scheme approved by your Grace in that despatch.

Pros. of Govt., 28th Sept. 1869, Nos. 436—439.
" " " 444, 445.

We have the honour to be,
My Lord Duke,
Your Grace's most obedient, humble servants,

Fort Saint George,
30*th Sept.* 1869.

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